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1900

MARIA DE LA PAZ

1900

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 343.

THE UNITED STATES, APPELLANT,

vs.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

Be it remembered that heretofore, to wit, on the 21st day of February, A. D. 1893, there was filed in the office of the clerk of the Court of Private Land Claims, at the city of Santa Fe, in the Territory of New Mexico, a petition, which said petition is in the words and figures following, to wit:

2 In the Court of Private Land Claims of the United States.

MARIA DE LA PAZ VALDES DE CONWAY, JOHN W. Conway, John D. Pray, Jesus Maria Ortiz y Baca, Encarnacion Romero y Ortiz, Maria Rosa Romero y Ortiz, Manuel Romero, Paulo Romero y Baldes, Felipe Romero, Encarnacion Romero, Francisco A. Romero y Rodarte, Antonio E. Romero y Rodarte, Paulo Romero y Ortiz, Luis Trujillo de Romero, Paulo Roybal, Ana Maria Romero, Vicente Romero, Rafael Romero, Perfecto Romero, Jose de la Luz Roybal, Rufina Ortiz de Ribera, and Ana Maria Roybal de Ribera, petitioners,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT.

To the Honorable Joseph R. Reed, Chief Justice of the Court of Private Land Claims of the United States:

The undersigned, Maria de la Paz Valdes de Conway, John W. Conway, John D. Pray, and all others named as petitioners in the foregoing title of this cause, by this their petition complaining of the United

3 States of America, respondent, show unto the said court as follows:

On the second day of January, A. D. 1731, Bernardino de Sena, Tomas de Sena, and Luis Lopez, then residents of New Mexico, presented to Juan Domingo de Bustamente, governor and captain-general of New Mexico, their petition in writing, wherein they stated that they had registered the surplus land in the abandoned pueblo of Cuyamungue as being royal, public, and uninhabited, from where the boundary line of the pueblo of San Diego de Tesuque terminates to where the grants of Lazaro Trujillo and the children of Juan de Mestas commence, and wherein they prayed the said governor and captain-general, in the name of the King of Spain, to make to them and their successors a grant of the said land, more particularly describing the said land as being situate on both sides of the river Tesuque (formerly Cuyamungue) and extending from the bluff of the pueblo of Cuyamungue to the hills of the Nambe road.

Thereupon, on the same day, the said governor and captain-general, according to the prayer of the said petition, made to the said petitioners, Bernardino de Sena, Tomas de Sena, and Luis Lopez, a royal grant in due form of law of the land mentioned as aforesaid in their said petition,

and by the terms of his granting decree in that behalf directed and commissioned the chief alcalde of the new village of Santa Cruz to notify the Indians of the pueblo of San Diego de Tesuque and the heirs of Juan de Mestas and Lazaro Trujillo and all other citizens of the immediate vicinity of the said granted land to show cause, if any they had, against the said grant, and also thereby further directed and commissioned the said chief alcalde, if he should find no objection to the said grant and no injury resulting therefrom, to give unto the said petitioners royal possession thereof, with boundaries designated and land marks placed on the said granted land, and to report the said juridical proceedings in writing at the foot of the said decree.

Pursuant to the said granting decree, Domingo Vigil, chief alcalde of the new village of Santa Cruz and its jurisdiction, in execution of and in compliance with the said commands thereof, did on the 22nd day of January, A. D. 1731, proceed with his attendant witnesses to the said pueblo of San Diego de Tesuque, and then and there caused all the Indians of the said pueblo, including the governor and captains thereof, to assemble, and notified them of the said royal decree by then and there reading it to them, and thereupon instructed them that if they had any objection whatever to the said grant to make such objection freely, and assured them that they would be duly heard in justice; but the said Indians in answer said then and there, jointly and severally, that they made no objection whatever to the said grant, and declared that it did not in any wise injure them. And then and there the said chief alcalde also cited Baltazar Trujillo and Lazaro Trujillo and the heirs of Juan de Mestas and read to them the said royal decree, and they, being thus informed of the contents thereof, then and there declared that they had nothing to ask in the premises, and that they had no objections to offer against the said grant, inasmuch as the same did not injure them.

Whereupon the said chief alcalde, in conformity with the instructions to him in that behalf of the said governor and captain-general, proceeded with his said attendant witnesses on the same day to the site of the abandoned pueblo of Cuyamungue, and having examined the boundaries of the said abandoned pueblo, and those of the lands of the said pueblo of San Diego de Tesuque, he found the division line between the lands of the said Cuyamungue and Tesuque pueblos, respectively, to be an arroyo that comes down from the east, westwardly to the river then known as the river Cuyamungue, but now known as the river Tesuque, where there was then a cottonwood tree, and on which arroyo there were then and still are two mounds of bluestone, one on one side of the said arroyo and the other on the opposite side thereof, a little above the same; and on the same day the said chief alcalde, in the presence of the said Lazaro Trujillo and the said Bernardino de Sena, examined and ascertained the north boundary of the said granted land and found the same to be the division line between the said granted land and the land of the said Lazaro Trujillo.

Thereupon the said chief alcalde delivered seisin and possession of the said granted land, in due form of law, to the said Bernardino de Sena to the use of the said grantees, designating and marking as the boundaries

thereof a point contiguous to and in front of the house of Lazaro Trujillo for the boundary on the north; the said arroyo, bluestones, and cotton-wood tree on the said river for the boundary on the south; the
6 hills and the road that leads to the pueblo of San Francisco de Nambe for the boundary on the east; and the hills and forests on the westerly side of the said river for the boundary on the west.

Thereupon the said chief alcalde, in the presence of his attendant witnesses, namely, Bartolome Trujillo and Francisco Baldez, duly executed and subscribed his act of juridical possession in the premises on the foot of the said royal decree, and returned the said royal decree and act of juridical possession to the said governor and captain-general, by whom the said proceedings of the said chief alcalde and the said act of juridical possession were thereupon fully approved, and the said royal decree and act of juridical possession were placed by the said governor and captain-general in the royal archives, kept in the city of Santa Fe, New Mexico, and a testimonio of the said title so granted and created was thereupon duly delivered by the said governor to the said grantees.

The said original royal decree and act of juridical possession are part of the archives of the Government of the United States, kept in the office of the surveyor-general, in the city of Santa Fe, New Mexico, and were derived by the United States from the King of Spain, immediately through the Republic of Mexico.

Your petitioners are unable to state accurately the area of the said granted land, but they believe that such area exceeds five thousand square acres. The said land has been provisionally surveyed by the United States, and the field notes of such survey and a plat thereof are
7 among the archives last aforesaid. A map of the said grant, as so made by the United States, is filed herewith; but, while the said map shows approximately the boundaries and extent of the said grant, your petitioners can not state, without a further survey of the said land, whether or not the said map is altogether correct.

The said private land claim has not heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to any authorities constituted by law for the adjustment of land titles within the limits of the territory acquired by the United States from Mexico, except only that the said land has been provisionally surveyed by the United States, and further that the said private land claim was examined and approved by the surveyor-general of the United States for New Mexico (Hon. T. Rush Spencer), and by him reported favorably to Congress, with a recommendation that the same be confirmed to the legal representatives of Bernardino de Sena, Tomas de Sena, and Luis Lopez, with the limits and boundaries stated in the said act of juridical possession, as appears by the said report, dated November 15, 1871, and now in the possession of the respondent.

Your petitioners are interested in the said private land claim, because some of them in severalty and others of them as tenants in common have acquired the same by purchase and inheritance, directly or mediately, from the said original grantees, and your petitioners are all legal representatives of the said grantees.

8 The said original grantees, upon the livery of seisin and possession of the said granted land, entered upon, possessed, occupied, resided upon, cultivated, and improved the same for many years, far exceeding the period of four years immediately succeeding the date of the said grant, and they complied with all conditions precedent and subsequent expressed or implied in the said granting decree, and they and their descendants and legal representatives, ever since the said 22d day of January, A. D. 1731, have been in exclusive, uninterrupted, continuous, peaceable, open, notorious, and rightful seisin and possession of all and singular the said land, claiming it as their own in fee simple absolute, under and by virtue of the said royal grant, and your petitioners, as such legal representatives, are now in the like seisin and possession of all and singular the said land under the same claim.

No person or persons, natural or artificial, are in possession of the said land or any part thereof, or claim the same or any part thereof adversely to your petitioners, or otherwise than by their lease or permission.

Copies of the said royal decree and act of juridical possession (in Spanish and English) and of the said proceedings and report of the said surveyor-general are herewith filed as part of this petition, the originals of all the said instruments and proceedings being in the possession of the respondent and not in that of your petitioners.

The said grant and your petitioners' title thereunder are complete and perfect and were so complete and perfect before and at the time
9. of the cession of New Mexico to the United States.

Your petitioners therefore pray that the validity of their said title and claim and of the said grant may be inquired into and decided by this honorable court, and that they may have all the relief in the premises which the said court is competent to afford and decree by virtue of the act of Congress under which it is organized.

Maria de la Paz Valdes de Conway, John W. Conway,
John D. Pray, Jesus Maria Ortiz y Baca, Encarnacion
Romero y Ortiz, Maria Rosa Romero y Ortiz, Manuel
Romero, Paulo Romero y Baldes, Felipe Romero, Encar-
nacion Romero, Francisco A. Romero y Rodarte,
Antonio E. Romero y Rodarte, Paulo Romero y Ortiz,
Luis Trujillo de Romero, Paulo Roybal, Ana Maria
Romero, Vicente Romero, Rafael Romero, Perfecto
Romero, José de la Luz Roybal, Rufina Ortiz de
Ribera, Ana Maria Roybal de Ribera, petitioners,

By JNO. H. KNAEBEL,

Their Attorney.

(Here follows map marked page 10.)

11 And be it further remembered that, to wit, on the 23rd day of
March, A. D. 1893, a summons was issued by the clerk of said
court, which said summons, with all endorsements thereon, is as follows,
to wit:

12 [Form No. 167.—U. S. Court of Private Land Claims.]

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

MARIA DE LA PAZ VALDEZ DE CONWAY,	}	Petition filed in the clerk's office this 21st day of February, A. D. 1893.
plaintiff,		
<i>versus</i>		
UNITED STATES OF AMERICA, DEFENDANT.		

The President of the United States of America to Matt. G. Reynolds,
esq., attorney for the United States before the Court of Private Land
Claims, greeting:

You, and each of you, are hereby notified that an action has been
brought in said court by Maria de la Paz Valdez de Conway, plaintiff,
against you as defendant, under the provisions of the act of the Congress
of the United States entitled "An act to establish a Court of Private
Land Claims and to provide for the settlement of private land claims in
certain States and Territories," approved March 3, 1891, and that a copy
of the petition of said plaintiff is herewith attached and served upon you,
and that you are required to appear and plead, demur, or answer to the
petition filed in said action, in said court, within thirty days from the date
of service of this summons upon you; and if you fail so to do, the said
plaintiff will take default, according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the Court of
Private Land Claims, and the seal of the said court, at the city of Santa
Fe, in said district, this 23d day of March, A. D. 1893, and of the Inde-
pendence of the United States the year.

[SEAL.]

JAMES H. REEDER, *Clerk.*

By IRENEO L. CHAVES, *Deputy Clerk.*

13 *Proof of service.*

UNITED STATES OF AMERICA,
District of New Mexico, ss:

SANTA FE, April 21, A. D. 1893.

I hereby certify that I received the within writ on the day of
March, A. D. 1893, and that I have personally served the same upon the
said defendant U. S. by delivering to—(served on me this 29 day March,

1893. Matt. G. Reynolds, U. S. atty.)—and each of them personally a true copy of the within writ at the time and place as follows:

This writ, therefore, returned by me, as the law directs, this 21st day of April, A. D. A. D. 1893.

Marshal's fees: Service, defendants, at \$2, \$; mileage,
miles, at 6c., going only, ; 1 summons, 4.00; total, \$4.00.
Paid by .

TRINIDAD ROMERO, *Marshal*.
By SERAPIO ROMERO,
Deputy Marshal.

14 And afterwards, to wit, at a stated term of the Court of Private Land Claims, begun and held at Santa Fe, on the 9th day of October, 1895, and on the third day of said term, the same being the fourteenth day of October, A. D. 1895, the following, among other proceedings, were had, to wit:

MARIA DE LA PAZ VALDEZ DE CONWAY }
vs. } No. 112. Cuyamungue grant.
UNITED STATES.

The above-entitled cause now coming on to be tried, there appeared J. H. Knaebel, esq., for and on behalf of the plaintiff, and Matt. G. Reynolds, esq., and Summers Burkhart, esq., U. S. attorneys, appeared for and on behalf of the said defendant, the U. S., and the parties having announced themselves ready, the trial of the cause was proceeded with on the pleadings presented. Oral and documentary proof was produced, and after full argument by counsel on both sides the cause was submitted and taken under advisement by the court.

Plaintiffs herein were granted leave to introduce further documents of derivative title.

15 On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

16 In the U. S. Court of Private Land Claims, district of New Mexico.

MARIE DE LA PAZ DE CONWAY }
vs. } Suit for what is known as the Cuya-
THE UNITED STATES. } mungue grant.

This cause having previously been set for trial and coming on to be heard this ninth (9th) day of October, 1895, there appeared as counsel Mr. John H. Knaebel, for the plaintiffs, and Mr. Summers Burkhart for the United States, and in the presence of the court the following proceedings were had, to wit:

Mr. KNAEBEL. I will read from the original documents in the archives, copies and translations of which are on file with the petition in this cause.

JUAN CRISTOBAL ROMERO, being called and sworn as a witness on behalf of plaintiffs, testified, through the medium of the official interpreter, as follows:

By Mr. KNAEBEL:

Q. State your name, age, occupation, and residence.

A. I am sixty years old; residence, Cuyamungue; my occupation, farmer; my name, Juan Cristobal Romero.

Q. Have you held any public office; and if so, what?

A. Yes, sir; I was a member of the Territorial Legislative Assemblies of '71 and '73. I have been a justice in this (Santa Fe) county, precinct number two, 1880, '81, and '82.

Q. Do you know of a grant called the grant of Bernardo de Sena; also called the Cuyamungue?

A. Yes, sir; I know it.

Q. State whether or not you were present in the year 1879 when that grant was surveyed by the Surveyor-General of the United States?

A. I was present.

Q. How long have you known that grant, so surveyed?

A. I do not remember well, but I think it was surveyed by Colonel McMullen.

Q. How long have you known that tract of land?

17 A. Since I arrived at the age of reason.

Q. By whom was it occupied in your boyhood?

A. This place was occupied by Vicente Valdez and Felipe Sena.

Q. Was Felipe Sena a relative of Bernardo Sena's?

A. So I was told.

Q. By whom?

A. The families there and other citizens—that Don Felipe and Don Vicente were brothers.

Q. Any other persons living there?

A. I do not know of anybody else within that grant.

Q. How did they use that land?

A. They cultivated it, planting wheat and corn, and had goats and built houses for them.

Q. At the time of the survey, was any notice given to the Indians in that vicinity—in the vicinity of that land?

A. Notice was given to everybody.

Q. Were any of the Indians present?

A. No, sir.

Q. Did you ever hear of any objection made of the possession of this grant by the Indians of the adjoining pueblos?

A. Never. They have never been opposed to it.

Q. If you know, state what is the general reputation in the vicinity there as to what this tract of land, indicated on this survey, was.

A. The general reputation at that place is that it was a grant which belonged to the heirs of Vicente Valdez and Paz Valdez.

Q. What was that grant called when you were a boy?

A. The Bernardo grant, it was called always.

(To the interpreter: You asked him to whom it belonged: I did not want to know to whom it belonged.) (Interrupted.)

WITNESS: And it belonged to him also; and it belonged to me. I bought that property from the administrators of Mr. Smith.

Q. What Smith?

A. Lawyer Smith.

Q. Mr. L. Smith, the United States attorney?

18 A. I do not know whether he was attorney of the United States, but I think he was here about the year 'fifty.

Q. How much of that land did you occupy under that grant title?

A. I can not state the amount of land, but I did not occupy all of it; I occupied portions of it with my family.

Q. For how many years?

A. I do not remember well, but I think it was from the year '66 to '83.

Q. Did you claim that possession under this grant title?

A. Yes, sir.

Cross-examination, Mr. BURKHART:

Q. Where were you born?

A. I was born at Cuyamungue.

Q. Have you always lived there?

A. I lived at Rio Tesuque nine years.

Q. Isn't it true, Mr. Romero, that only small portions of the land embraced within the survey you speak of have been cultivated by anybody?

A. All of it has not been cultivated.

Q. Only a few small pieces were cultivated on the northern end—isn't that true?

A. No, north and south also; I cultivated on the north and Don Vicente Valdez on the south.

Q. How far from where Don Vicente Valdez cultivated did you cultivate?

A. I can not state the distance; it is very far; but I think it is very near three thousand yards from where my house is situated to that of Don Vicente.

Q. And those were the only places which have been cultivated to your knowledge?

A. According to what I have seen.

Q. And the rest of it is land that can not be cultivated?

A. It can be cultivated.

Q. Never has though?

A. I never saw it cultivated.

Q. Don't the Indians graze their cattle over that land?

19 A. They never graze upon it; because those lands were grazing places always for the two settlers that were there. There has never been one single Indian pasture there.

Q. Have you ever paid any taxes on this land?

A. Yes, sir.

Q. How long did you pay?

A. I paid only as long as I was possessor of it. I don't pay now.

Q. On how much did you pay—on the whole grant?

A. No, sir. Only for that what I believed to be the grant?

Q. Now about what size was the land that you cultivated?

A. I can not state that, only that sometimes I would sow three fanegas of wheat, and maybe as many of corn; sometimes more, but I can not state with accuracy.

Re-direct examination, Mr. KNAEBEL:

Q. During that time where did you pasture your stock; animals and goats?

A. In the vicinity there; in the places that we did not occupy.

Q. Within the limits of the grant, did you not?

A. Yes, sir.

Q. Have you been over this grant?

A. Yes, sir; time and time again.

Q. Describe the general character of the land embraced within the Bernardo de Sena grant as surveyed by the United States.

A. The majority of it consists of sand hills, cut up by arroyos; there are some places there that may be cultivated; those may be one acre, in one place, and maybe twenty acres in another, but it is all pretty much sand hills; and there are a great many rocky hills, too.

Recross-examination:

Mr. BURKHART. Look at that map [showing witness map made by U. S. surveyor-general of this tract] there at the northern part of the grant where the lands are designated as "cultivated lands;" now as a matter of fact isn't that the only land that is cultivated within that tract, or that can be cultivated?

A. That is north of the Cuyamungue River?

Q. They are the lands on the northern boundary of the grant?

20 A. Do these lines run along the boundaries of the grant?

Q. Yes; this is north, this is south, and this is the grant [indicating].

A. That marked is not all the cultivable land. There is quite a lot here [indicating] on the north side of the Cuyamungue River; I should say eighty to one hundred acres.

Q. Where is that? What part of the grant is it in?

A. It has always been considered about the middle of the grant by the people around there. It is in the neighborhood of eighty or one hundred acres.

Q. Is there eighty or one hundred acres of cultivable land in that entire grant?

A. Yes, sir; over.

Q. How much over?

A. I can't say exactly how much over, as it is very irregular and cut up. There is a great deal of it which is good, but has never been cultivated.

Q. When was that land cultivated—recently?

A. It has been cultivated since I took possession, I know.

Q. Had it ever been cultivated before that time?

A. Yes, sir; for years and years.

Q. The same place you have reference to?

A. Yes, sir; the same place.

Witness excused.

Mr. KNAEBEL. I will offer in evidence the original grant papers and translations and the various documents as they have been filed, and the documents showing the interests of these parties. I will not read any of

them, for I understand there is no contest made on those points. The questions raised by the United States, I believe, are those of law.

JOHN W. CONWAY, a witness called and sworn on behalf of the plaintiffs, testified as follows:

Direct examination, Mr. KNAEBEL:

Q. State your name, age, and residence.

A. John W. Conway; age, 57 years; I live in Santa Fe.

21 Q. Are you the same John W. Conway who, with his wife, joined in a petition to the surveyor-general for an examination of the grant in question here, the Bernardo de Sena?

A. Yes, sir.

Q. How long have you known that tract of land?

A. Personally, since 1870.

Q. Did you or not claim any interest in that land at that time?

A. Yes, sir; and I signed certain papers showing that, and I turned over those papers, and the original grant papers were also turned over, and I took steps to have it confirmed by the surveyor-general at that time.

Q. What do you know as to any cultivation or any use being made of the lands thus claimed under the original grant title?

A. It had been used considerably for pasture purposes.

Cross-examination:

Q. Have you any deeds showing your interest in that grant?

A. I have various documents relating to it.

Q. You never had any written conveyances for the interests you had in this grant?

A. Yes, sir; I did. Otherwise I would not own it. I have deeds that are on record in the probate clerk's office, and I have the originals at home. I have conveyed the interests away, but I have my deeds yet.

Q. To whom did you sell?

A. To Mr. Knaebel.

Witness excused.

MARIA DE LA PAZ DE CONWAY, one of the plaintiffs, called as in her own behalf, testified through the medium of the official interpreter, as follows:

Direct examination, Mr. KNAEBEL:

Q. What is your name and residence?

A. Maria de la Paz Conway; I live in Santa Fe.

Q. You are the wife of John W. Conway?

A. Yes, sir.

Q. Do you know a tract of land called the Bernardo de Sena grant?

A. Yes, sir.

22 Q. Do you know who occupied that land at any time?

A. It is not occupied now, but it was occupied before.

Q. By whom?

A. By my father, Vicente Valdez.

Q. How did your father, Vicente Valdez, use the land?

A. I think by farming it. He lived there. I wasn't very old at the time.

Q. Did you live there with your father?

A. Yes, sir. I was born there and I was raised up there.

Q. Do you know whether your father claimed that under the Bernardo de Sena grant title?

A. I know it was the grant of Bernardo de Sena, and that it was claimed by my father.

No cross-examination; witness excused.

Plaintiffs rest.

For the United States:

Mr. BURKHART. I offer in evidence these two plats showing the location of what are known as the Nambe and Pojoaque grants, confirmed by Congress.

I also introduce in evidence archive No. 882, with translations.

I also offer archive No. 1342, with translations.

I also offer in evidence the files of the U. S. surveyor-general's office in reported cases "N" and "R," which constitute the papers transmitted to Congress in the claims of the Pojoaque and Nambe Indian grants, respectively.

The United States rest.

JUAN CRISTOBAL ROMERO recalled on behalf of plaintiffs:

Mr. KNAEBEL:

Q. What relation did you say Felipe Sena, whom you mentioned, was to the grantee, Bernardo de Sena?

(Objected to by the United States for the reason that witness has not shown himself to be connected with the Sena families, and is therefore not competent to testify as to matters of relationship existing in that family.

Objection overruled.)

23 A. Felipe was a nephew of Bernardo de Sena.

Q. Is Felipe Sena dead or alive?

A. He is dead.

Q. When did he die?

A. I do not remember; it was about '70 or '75.

Q. Did you ever know him to be in occupation of this grant?

A. Yes, sir.

Q. Did you claim under him?

A. Not under Felipe Sena.

Q. Then how did you get your conveyance?

A. I got it by purchase from the administrator of Mr. Smith. The administrator was Henry O'Niell, and the lawyer was John Houston.

Q. How did Smith claim title?

A. He purchased it at a public sale.

Q. Whose interest did he purchase?

A. The interest belonged to Felipe de Sena.

Q. Bernardo de Sena is dead?

A. Yes, sir.

Cross-examination, Mr. BURKHART:

Q. Did you know Felipe Sena very well?

A. Yes, sir; very well.

Q. How old was he when he died?

A. I can not say, but he was a very old man.

At this point court took an adjournment until 10 o'clock a. m. until to-morrow (October 10th), and this cause was continued until that time.

October 10th, 1895. The following proceedings were had in this cause, to wit:

Mr. BURKHART. There were some witnesses who testified in the Pojoaque and Nambe cases before the surveyor-general, some old Indians, and before introducing them I will ask Mr. Knaebel, representing the claimants here, to admit that those witnesses are dead, to save me the trouble of proving it, and then I will consent to his introducing his abstract of title without objection.

24 Mr. KNAEBEL. I don't exactly understand.

Mr. BURKHART. I wish to offer the testimony of these witnesses in the Pojoaque and Nambe cases.

Mr. KNAEBEL. Very well. For the purpose of shortening the record, I will admit that those witnesses are dead, but I do not waive the right to make any objections I may think proper.

Mr. BURKHART. Very well. I offer in evidence the testimony taken in these two cases before the surveyor-general.

Mr. KNAEBEL. I will offer, with the consent of the United States attorney, an abstract of title in lieu of the deeds we have filed.

Case closed. Argument followed. Submitted.

I hereby certify that the above and foregoing is a full, true, and correct transcript of the proceedings had in open court in the case of Maria de la Paz Conway vs. The United States.

LYMAN F. PARKER, Jr.,
Stenographer, Court of Private Land Claims.

AUGUST 1, 1896.

25 *Plaintiffs' exhibit.*

Transcript of private land claim reported No. 54, known as the Cuyamungue grant, made to Bernardino de Sena and others, January 2, 1731, and approved by the surveyor-general of New Mexico, November 15, 1871.

Bernardino de Sena et al.

UNITED STATES OF AMERICA,
Territory of New Mexico.

To the Honorable T. RUSH SPENCER,
United States Surveyor-General for the Territory of New Mexico:

Your petitioners, John W. Conway and his wife Maria de la Paz Valdez, and Juan Cristoval Romero, purchaser, all residents of the county of Santa Fe, Territory of New Mexico, present owners and claimants of the Cuyamungue tract of land in said county, would respectfully state to you that in the year 1731 Benardo de Sena, Tomas Sena,

and Luis Lopez petitioned Juan Domingo de Bustamante, the governor and captain-general of the Kingdom of New Mexico, under the Crown of Spain, for a grant of the surplus land in the abandoned pueblo of Cuyamungue. Said petition was duly presented, and, being fully considered by said governor, a grant was made to said petitioners on the 2nd day of January, 1731, to the tract called Cuyamungue, situate in the present county of Santa Fe, Territory aforesaid, and described and bounded as follows, to wit: On the north of the house of Lazaro Trujillo on this side of the river; on the south by an arroyo, two mounds of blue stone, and a cottonwood tree on the said river of Cuyamungue; on the east by some hills and the road that leads to the pueblo of San Francisco de Nambé, and on the west by some hills and forests on the other side of the Cuyamungue River, as is designated in plat marked "B," accompanying this petition. All of which points and boundaries are well-known landmarks in said county of Santa Fe. The said grant was made to the said grantees in fee, and was duly taken possession of by said grantees in accordance with the forms of law then in force on the 22nd day of January, 1731, and ever since that time the said grantees, and their heirs and legal representatives, have held quiet and peaceable possession thereof, without any adverse claim of any kind whatsoever.

The said claimants and petitioners cannot state with accuracy the quantity of land contained in said grant, but it is supposed to contain about five thousand acres. Nor can they furnish an accurate plat of survey, as no survey has been made of the same, but herewith append a plat of said grant as accurate as possibly can be made from the maps and known metes and bounds above given, and which is supposed to be accurate enough to be placed upon the general maps.

The original grant is herewith presented, marked "A," and is begged to be made a part of this petition, to be referred to whenever necessary. Claimants present this their said claim before you, under the act of Congress approved July 22nd, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," and respectfully ask approval and confirmation of their said claims to the legal representatives of the original grantees.

SAMUEL ELLISON,
Attorney for Claimant.

SR. GONERUR. Y CAPPN. GENL.:

Bernardino de Sena, Tomas de Sena, Luis Lopez, vecinos de este reyno, ante vssa. paresemos en la mas bastante forma que en derecho aya lugar y al nuestro conbenga, y dezemos: que registramos las demasias de tierras que ay en el pueblo despoblado de Cuyamungue, por realengas, yermas, y despobladas, desde donde acaban los linderos de el Pueblo de Tesuque, hasta donde empiesan las mercedes de Lazaro Trujillo, y de los hijos de Juan de Mestas, y dichas mercedes se á de servir vssa. de hasernos á nombre de su majestad para nosotros y nuestros sub-
27 sesores, para cria de ganados mayores y menores y caballos de una y otra banda del rio, y desde el barranco de dicho pueblo de Cullamungue hasta las lomas del camino de Nambe con zitazion de nos pastores y con la calidad de poblarlos dntro de el termino de la ley por todo lo cual y lo

mas que alegar podemos y a nuestro favor haga que damos por espresado. A vssa. pedimos y suplicamos con el mas profundo rendimnto. sea muy servido de mandar haser como llebamos pedido, en que reseviremos bien y merced con justicia? Juramos es de nuestro escripto en toda forma, y por no ser malizioso protestamos contra y en lo nesesario, &c.

BERNARDINO DE SENA.

TOMAS DE SENA.

LUIS LOPEZ.

AUTO.

Y por su senoria vista la hubo por presentado en cuanto á lugar en derecho y en atenzion alo que los suplicantes piden en escripto les haria e hizo merzed de tierras que espresan en nombre de su magd., y para ello el alcalde mayor de la villa nueba de Santa Cruz haga zitation en formaq. los Yndios del pueblo de Tesuque y á los herederos de Jn. de Mestas, y Lazaro Trujillo, y demas vezinos ynnmediatos para qui se tienen contradesar ni lo hagan q. seran oydos y administra justisia, y de no haber perjuicio ni contradizion alguna el dho. alcalde mayor les dara á los suplicantes la posicion real, cual aprehenderan senalando linderos y poniendo
28 mejoras lo cual ejection dho. alcalde mayor poniendolo por diligenzia al pie de este escripto con toda claridad. Asi lo provello, maando y firmo su sria. por ante mi el presente secretario de goon. y guerra.

JUAN DMO. DE BUSTAMANTE.

Ante mi:

ALFONSO RAEI DE AGUILAR,

Srio. de Gu. y Gra.

En el pueblo de San Diego de Tesuque, en ve'ite y dos dias del mes de enero de mil setesientos y tre'ita y un anos yo, Domingo V'ijil, theniente de alcalde maior de la villa Nueba de Santa Cruz y su jurisdiccion en ejecucion y cumplimiento del auto proveido del Senor Governado Domingo de Bustamante, vine á este dho. pueblo y estando en el hice juntar a todos los yndios, governador y capitanes, á los cuales hize la citacion que dho. senor me ordena y manda, leiendole el referido auto dandoselo á entender si tenian que contradesar alguna cosa sobre la mersed de tierras que dho. sr. governador le hacia á Bernardo de Sena lo que isiesen ante mi libremente. que seran oidos en justicia. Y estando enterados del contexto referido autto dijeron todoosjuntos y cada uno de por si que no tenian que contradesar porque no les perjudicaba en manena alguna cosa alguna; Y de la misma forma zite a Baltazac Trujillo, Lazaro Trujillo, y los herederos de Juan de Mestas, leiendoles la referida merzed y estando enterados de su contenido dijeron que no tenian que pedir ni contradesar cosa; en contrario por no perjudicarles la referida merced hecha á favor de Bernardo de Sena, en cuia conformidad y en virtud de lo mandado por dho. ssr. governador y capitan general, passe yo dho. teniente de alcalde maior, con los testigos de mi asistencia al pueblo de Cuyamungue y reconociendo los linderos del pueblo y tierra de Tesuque, que llegan hasta un aarroyo que baja de oriente á poniente hasta el rrio Cuyamungue, adonde esta un alamo y en dho. arroio, á un lado estando dos mojoneras de piedras azules uno en

29 un lado y otro de otro, poco mas arriba de dho. arroyo, i asiendo la misma diligensia con las tierras que lindan por la parte del norte, que son de Lazaro Trujillo, quien se hallo presente, y estandolo tambien el dho. Bernardo de Zena, le coji de la mano y lo passee por dhas. tierras, arranco yerbas, tiro piedras, y haciendo las demas zeremonias que el derecho dispone se agan en senal de posesion, la cual le di de dhas. tierras que cojen por la parte del norte en frente de una casa de Lazaro Trujillo, de esta banda del cerrio por la parte del sur con dho. arroyo piedras azules y el alamo que esta en el rrio de dho. Cuyamungue; por el oriente con unas lomas y camino que ba del pueblo de San Fraco. de Nambe, y poer el poniente con unas lomas y monte que esta en la otra parte del rrio de Cuyamungue. Todo lo cual se hiso y exuto y aprehendiola posesion rl., queita y pasificamte., sin contradiccion alguna; y para q. conste lo firme con los testigos ynfrascritos de mi asistensia; fha. ut., supra.

DOMINGO MONTES VIGIL,

Juez Receptor.

Testigos de asta.: FRANCO. VALDEZ.

Testigo de astta.: BARTOLOME TRUJILLO.

TERRITORIO DE NUEVO MEJICO,

Condado de Santa Fe:

Yo el infraserito escribano de la corte de pruebas en y por el Condado de Santa Fe, en el Territorio de Nuevo Mejico, certificado que hoy el dia veinte de Julio, A. D. 1868, haan sido enregistrados por mi los antedentes documentos en el libro letra D, paginas 501, 502, 503, y 504, de registros de documentos de tierras, etc., el cual es tenido en esta oficina con tal objeto.

En testimonio de lo cual pongo mi nomre y el sello de la corte de pruebas de dicho condado de Santa Fe, Nuevo Mejico, hoy el dia 20 de Julio, A. D. 1868.

TRINIDAD ALARID,

Escribano de la Corte de Pruebas y Ex-Oficio Registrador.

30

Plaintiffs' exhibit.

Translation of transcript of Private Land Claims, R. No. 54, Cuyamungue Grant.

To His Excellency the Governor and Captain-General:

We, Bernardino de Sena, Tomas de Sena, and Luis Lopez, residents of this Kingdom, appear before your excellency in due form of law, and say that we register the surplus land in the abandoned pueblo of Cuyamungue as royal public and uninhabited from where the boundary line of Tesuque terminates to where the grant of Lazaro Trujillo and the children of Juan de Mestas commences, and that your excellency will be pleased to make said grant, in the name of His Majesty, to us and to our successors, for the raising of all kinds of live stock, on both sides of the river and from the bluff of the Pueblo of Cuyamungue to the hills of the Nambe road by citation of the parties with the condition to settle the same within the time prescribed by law. In consideration

of all of which and all else we might allege favorable to us we give as if expressed. In view of all which we also pray your excellency with the most profound humility to be pleased to order as we have requested, whereby we will receive benefit, favor, and justice, and we declare this our petition to be in due form and without dissimulation and as may be necessary, &c.

BERNARDINO DE SENA.
TOMAS DE SENA.
LUIS LOPEZ.

DECREE.

In the village of Santa Fe, on the 2nd day of the month of January, 1731, before His Excellency Juan Domingo de Bustamante, governor and captain-general of this kingdom of New Mexico, its forces and garrisons castellan of His Majesty this petition was presented by the parties thereto, and the same being seen by his excellency, he treated the same as before him, so far as the law contemplates; and in attention to the prayer of the applicants in their petition, he made to them the grant of land mentioned by them, in the name of His Majesty. Therefore
31 the chief alcalde of the new village of Santa Cruz will notify the Indians of the pueblo of Tesuque and the heirs of Juan de Mestas and Lazaro Trujillo and all other adjoining citizens, in due form, in order that may make objections, if any they have, and be heard in justice administered, and if there be no injury nor objection whatever the said chief alcalde will give unto said petitioners the royal possession, which they shall take by designating boundaries and placing landmarks, which said chief alcalde shall state clearly in writing at the foot of this decree. This his excellency provided, commanded, and signed before me, the present secretary of state and war.

JUAN DOMINGO DE BUSTAMENTO.

Before me :

ALPHONSO RAEI DE AGUILAR,

Secretary of State and War.

In the pueblo of San Diego de Tesuque, on the 22nd day of the month of January, 1731, I, Domingo Vigil, lieutenant-chief alcalde of the new village of Santa Cruz and its jurisdiction, in execution of and in compliance with the decree rendered by His Excellency Juan Domingo de Bustamante, governor and captain-general, arrived at said pueblo, and being therein, I caused all the Indians, governor, and captains to assemble, and notified them of what his excellency ordered and commanded, by reading to them the said decree, giving them to understand that if they had any objection whatever to make to the grant of land made by his excellency the said governor to Bernardo de Sena to make it to me freely; that they would be heard in justice; and being informed of said decree, they jointly and severally said that they made no objection whatever, and that it did not in anywise injure them. In the same form I cited Baltazar Trujillo, Lazaro Trujillo, and the heirs of Juan de Mestas, and reading to them the said grant, and they being informed of the contents thereof, they said that they had nothing to ask or objection to offer against said

grant, as the said grant, as made in favor of Bernardo de Sena, did not injure them. In conformity therewith and by virtue of the order of his excellency the governor and captain-general, I, the said lieutenant-chief alcalde, proceeded, in company with my attending witnesses, to the pueblo of Cuyamungue, and having examined the boundaries of the pueblo and the lands of Tesuque, which reach to an arroyo that comes down from the east to west to the river of Cuyamungue, where there is a cottonwood tree, and on said arroyo there are two mounds of blue stone, one on one side and the other on the opposite side thereof, a little above said arroyo; and observing the like proceedings as to the boundaries of the land on the north, which are those of Lazaro Trujillo, who was present, as also the said Bernardo de Sena, whom I took by the hand and conducted him over said lands, he pulled up herbs and threw stones and performed all other ceremonies as provided by law in proof of possession, which I gave him of said lands, which reach on the north to in front of a house of Lazaro Trujillo, on this side of the river; on the south by said arroyo, blue stones, and cottonwood tree on the said river of Cuyamungue; on the east some hills and the road that leads to the pueblo of San Francisco de Nambe on the west and forests on the other side of the Cuyamengue River; all of which was done and executed, and he took the royal possession thereof quietly and peaceably, without any molestation; and in testimony whereof I sign this with the undersigned attending witnesses, date as above.

DOMINGO MESTAS VIGIL,
Special Justice.

Attending witness: BARTOLOME TRUJILLO.
Attending witness: FRANCO. BALDEZ.

The above and foregoing is a correct translation made by me of the muniment of the Cuyamengue grant, to the best of my knowledge and belief.

SAML. ELLISON.

SANTA FE, NEW MEXICO, *August 10, 1871.*

Sworn to and subscribed before me this August 10, 1871.

T. RUSH SPENCER,
Surveyor-General.

33

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, Aug. 31, 1871.

The foregoing translation having been by me compared with its original in Spanish, and found correct, the same is hereby adopted.

DAV. J. MILLER,
Translator.

Bernardino de Sena et al., Cuyamengue tract.

JOSE RAFAEL MESTAS, being by the surveyor-general duly sworn, on his oath decrees:

Question. What is your name, age, residence, and have you any interest in the private land claim now here pending for the tract of land

situated in Santa Fe County, New Mexico, purporting to have been granted in the year 1731 to Bernardino de Sena, Tomas de Sena, and Luis Lopez by the Spanish Government?

Answer. My name is Jose Rafael Mestas; my age is sixty years; I reside at the town of Pohuaque in this county, and have no interest in the tract of land refer'ed to.

Q. Do you know the tract of land referred to of Cuyamengue? If so, state how long you have known it, what are its boundaries, whether it is settled upon and cultivated; and if so, how long, and by whom.

A. I know the land known as the Cuyamengue tract, and have known it all my life, having been born upon the place. Of the boundaries, I do not know that on the north, but that on the east I have always understood to be where there stands a landmark of stone in the prairie, said to be the dividing line between this grant and that of the Tesuque Indian pueblo, on the south the arroya de Tio Luis, and on the west the hills and woods just beyond the Cuyamengue Creek. The land has always, since I have known it, been occupied and cultivated, and is now occupied and cultivated. There are now residing upon and cultivating the land Juan Cristoval Romero, John W. Conway, and various other persons renting land.

JOSE RAFAEL ^{his} MESTAS.
mark.

34 Witness: DAV. J. MILLER.

Sworn to and subscribed by said Mestas before me this September 25, 1871.

T. RUSH SPENCER,
Surveyor-General.

JOSE LIONICIO JEMENEZ, being sworn by the surveyor-general, on his oath declares:

Question. What is your name, age, and place of residence, and have you any interest in the land claim now here pending claimed under an alleged land grant, here present, purporting to have be'n made in the year 1731 by the Spanish Government to Bernardino de Sena, Tomas de Sena, and Luis Lopez for a tract of land in the county of Santa Fe, known as the Cuyamengue tract.

Answer. My name is Jose Lionicio Kemenez; my age is forty-one years; I reside at the town of Tesuque in Santa Fe County, and I have no interest in the tract of land referred to.

Q. Do you know the boundaries and extent of the tract in question, whether it has been and is occupied and cultivated, and by whom? If so, state what you know in the premises.

A. I know the tract in question and its boundaries and extent from having often heard them stated by my father and grandmother and others, and from having all my life known the land. The boundary on the north I thus understood to be a rocky hill; on the east a large stone mound erected on the side of the Nambe Road, on the south the land of the Indians of the pueblo of Tesuque, and on the west the top of the dividing ridge between the Cuyamengue and Del Norte rivers. The extent of the grants I calculate, from east to west, about ten and from

north to south about two and a half miles. The land has always been occupied and cultivated since I have known it, formerly by Vicente Valdez and his brothers and Felipe Sena, and is now occupied and cultivated by Juan Cristobal Romero, John W. Conway, and others.

his
JOSE LIONICIO JEMENEZ.
mark.

35 Witness: DAV. J. MILLER.

Sworn to and subscribed by said Jemenez before me this September 25, 1871.

T. RUSH SPENCER,
Surveyor-General.

Bernardino de Sena et al. Cuyamengue tract.

This case was filed in this office August 11, and at the request of the present claimants of the land was set for trial for September 25, 1871.

The title papers are comprised in one document, being the original muniments in the grant consisting of—

1. The petition of Bernardino de Sena, Tomas de Sena, and Luis Lopez to the governor and captain-general of the province of New Mexico, praying for a grant to a piece of the royal domain at the abandoned Indian pueblo of Cuyamengue f'r the raising of horses and other live stock.

2. The decree of the governor and captain-general, Juan Domingo de Bustamante, dated at Santa Fe, January 2, 1731, granting to the petitioners the land prayed for by them and directing the chief alcalde of Santa Cruz to summon the Indians of the pueblo of Tesuque and other adjoining occupants of the soil, and ascertain from them whether the making of this grant would injuriously affect any of them, and, if not, then to place the grantees in formal possession of the land.

3. The act of possession executed by the lieutenant chief alcalde of Santa Cruz, dated at the pueblo of Tesuque January 22, 1731, certifying that he had duly summoned the people and authorities of that pueblo and other adjoining settlers, and ascertained from them that no injury would result to any of them from making the grant, and that thereupon he duly placed the grantee, Bernardino de Sena, in possessio', stating the boundaries of the land, as on the north to in front of the house of Lazaro Trujillo; on the south the thereinbefore described arroyo, blue stones and cottonwood tree; on the east the hills of the Nambe public
36 road; and on the west some hills and a wood beyond the Cuyamengue River.

The signature to the granting decree, purporting to be Gover'or and Captain-General Bustamante's signature, has been compared with others of his found among the old Spanish archives of this office and is believed to be genuine.

The tract of land in question, known as the Cuyamengue grant, is situated within the present county of Santa Fe, and embraces, according to the petition and plot presented to the surveyor-general of the claimants, of about five thousand (5,000) acres of land.

The ancient Indian pueblo of Cuyamengue referred to in this grant is known to be extinct. The governor and captain-general, in his granting decree, and the officer executing the same alike ignored the existence of any such pueblo when notifying the adjoining settlers to make objection, if any they had, why the land at the abandoned "pueblo of Cuyamengue" should not be granted the applicants therefor. There is no evidence on file in this office that the pueblo ever held a grant for land; indeed, there is none that it ever existed, except in the form of incidental reference occasionally met among the old archives.

At the time of the making of the grant the record shows there was no objection interposed thereto, though formal opportunity was offered parties interested for making known any they might have had. At the investigation before the surveyor-general no objection was made to his approval of the concession, and the testimony then presented shows the present claimants to have been and to be in quiet and peaceable possession of the land, and to have occupied and cultivated the same for at least the last half century.

The land in this case was applied for to the governor and captain-general by Bernardino de Sena, Tomas de Sena, and Luis Lopez and was by him granted to them in equal interest, and the chief alcalde was authorized and directed to place them in possession. There appears no subsequent change or modification in the application or in the granting decree, wherefore it is deemed reasonable to conclude in order to account in a rational way for the alcalde's ignoring the grantees, Tomas de Sena and Luis Lopez, in his record of the execution of the grant, that in that act he held as
 37 sufficient the presence of the principal of the grantees, Bernardino de Sena, and accepted and dealt with him as the representative of his two associates and thereby intended to legally place, and did so place, the three grantees equally in possession of the land, this manner of instituting a community of grantees being as it was usage and custom.

The grant in this case is deemed and held by this office to be a good and valid one under the Spanish and Mexican laws, usages, and customs, and the treaty of Guadalupe Hidalgo and is hereby approved and recommended for confirmation to the legal representatives of Bernardino de Sena, Tomas de Sena, and Luis Lopez, with the limits and boundaries stated in the act of possession therein, and a transcript of all the papers in the claim is herewith transmitted to the Congress of the United States for its consideration and action in the premises.

T. RUSH SPENCER,
Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
Santa Fe, New Mexico, November 15, 1871.

SURVEYOR-GENERAL'S OFFICE,
Santa Fe, New Mexico, Dec. 11, 1871.

The for'going transcript is a correct copy of all the papers in private land claim No. 54, in the name of Bernardino de Sena et al., on file in this office.

T. RUSH SPENCER,
Surveyor-General.

(Here follow maps marked 38 and 39.)

(Año de 1695.) No. 340.

Autos que se han fulminado de la na. poblacion y villa fundada denominada La Exaltazn. de la Cruz de los Mexnos. del Rey y Sr. Don Carlos Segundo, puesta y conseguida al desvelo del Sr. Governdo. y Captn. Genl. de este Reyno de la Nueva Mexico, su nuevo restaurador y conquistador á su costa y reconquistador Don Diego de Vargas Zapata Lujan Ponce de Leon, y se remitió testimonio de dhos. autos al Exmo. Virrey, Conde de Galve, en once de Mayo de dicho año de 1695.

- 41 Dn. Diego de Vargas Zapata Lujan Ponce de Leon, Govdor. y Capn. Genl. de este Reyno y Provincias de la Nueva Mexico, su nuevo restaurador y conqdor., á su costa reconqdor. y poblador en el y Castellan de sus fuerzas y presidios por su Magd., &c.:

Siendo el tiempo forzoso de dar asiento fixo á las fams. que de cuenta de su Magd. el Rey N. Sr., y que Dios gde., y en su Rl. nombre el Exmo. Sr. Virrey Conde de Galve que lo es actual de todo el Reyno de la Nueva España, su Govor. y Capn. Genl. y Presidente de la Rl. audiencia y corte de la ciud. de Mexico y de todo este nuevo mundo y con acuerdo de la Rl. Junta y Señores Ministros de ella, tiene echa la dha. remision como la demas que entre el dho. Govor. y Capn. Genl. en este Reyno que una y otra se halla existente en esta dha. villa y así mismo se espera entre otro nuevo trozo y ramo de vecindad y para darla desde luego su asiento fixo para su poblazn., tierras para hacer sus sementeras, pastos, montes y aguas abrevaderas exidos y poteros para que puedan tener en el todo lo que necesitan para la cria de sus ganados mayores y menores de todas espezies y calidades, y havdo. reconocido y siendo de la Rl. voluntad el dejarme la disposicion en el todo unimoda y pribatibante. para su asiento y poblazn. fixa en este dh. Rno. de dha. vecindad y que esta la señale en las partes que reconociere por conbeniente á su Rl. servicio fixesa permanencia, seguridad, comodidad y utilidad procurando buscarsela en tierras distintas y separadas si posible fuese de los naturales de las naciones y pueblos de este dho. Rno. y distrito de esta dha. villa para obiar el que no tengan estando rebueltos con los Españoles molestia ni reciban vejazion ni agrabio sino antes vien estando separados esten los unos y los otros con toda quietud q. de ella se siga la tranquilidad y concordia de dhos. naturales con dhos. Españoles de suerte que se porten y abengan con buena correspondencia amistosamente aragandose en ellos Nra. Sta. Fée en los realses de firmeza y con la esperanza con el tiempo á su exemplar las naciones confinantes bárbaras y pentalias se reduzcan y en dha. atenzn. y audo. la puesto yo dho. Govor. y Capn. Genl. en dar el debido cumplimiento á dha. Rl. voluntad y que tanto me la ha encargado y repetido en su Rl. nombre dho. Sr. Exmo. Virrey he hecho las diligencias nō solo havdo. cursado y pasado y estado experimentando, y reconocido las entradas salidas dereseras rumbos distancias unicamte. y Genl. de todo este dho. Rno. y mas á una parte de la tierra de la nasyon de las Yutas havdo. entrado con campo y exército de las Rls. armas de su Magd. que son de mi cargo pr. el ultimo pueblo y nazn. de los

42 Taos de este dho. rno. y salido por la boca del río de Tzama al Pueblo de San Juan de los Caballeros á distancia de la dha. villa

de diez leguas y siendo dho. reconozimto, echo como dho. es per mi dho. govor. y capn. genl. he hallado que el asiento y poblacion se deve haser de la dha. vezindad y del ramo dho. que está de próximo para entrar en tierras meramte. de los Españoles que desampararon y dejaron desde la sublevazn. genl. del mes de Agosto del año de ochenta de este dho. rno. en los parajes y aciendas que salen desde esta dha. villa de Sta. Fée para el Pueblo de Yesuque y las que corren desde los Pueblos de San Ildephonso y Sta. Clara de la otra vanda del rio de el Norte y de esta desde las que corren y se hallen desde delante de la mesa de Sn. Ildephonso para el camino que ba á dho. Puo. de San Juan de los Caballeros y las que corren para los pueblos poblados en dhas. haziendas y son de Sn. Lázaro y Sn. Xptobal y las que salen de este y corren pr. el camino rl. que ba á Picuries cañada que llaman de la hazda. de Moraga y estancias de los Capitanes Luis Martin y Juan Luis delante y en el paraje y pago que llaman de Simayo y para que las reconosca mi lugar tente. genl. de govor. y capn. genl. que lo es el Mre. de Campo Luis Granillo le doy orden passa con el Sargto. Juan Ruiz de Cazerres por ser lengua de dha. hazn. de los Teguas y para la de los dhos. dos Pueblos de Thanos de Sn. Lázaro y San Xptobal pase Matias Lujan, su alcalde mor., por ser tambien lengua y reconosca en primer lugar en las suso dhas. hazdas. y puestos con distincion haciendo un mapa denominando el nombre de los lugares y el del dueño que fué y tubo de cada hazda. y segun la calidad de tierras de su distancia reconosca por si y confiera con los dhos. que número de vezinos se podrán poblar dandoles tierras para que cultiben y siembren con comodidad los unos y los otros sin embarasarse y con albertencia de que los pastos de sus sitios y terminos de cada una de dhas. hazdas. sean comunes y no por individuos y los coma el ganado que cada uno tubiere en mas o menos cantidad y solo siendo iguales en posible de el puedan compareser á pedir mas cavesas el uno que el otro y de esta suerte hara la dha. demarcazn. mapa compute y regulacion y por lo que mira á los dhos. dos Pueblos de Sn. Lázaro y Sn. Xptobal hallandose haverse poblado en haziendas y tierras que fueron y son meramte. y pertenezzen señaladamte. pertenezian y pertenecieron á los suso dhos. vezinos españoles que por causa de la suso dha. y referida sublevazn. genl. de codo este dho. rno. en el año y mes de Agosto de ochenta dho. las desampararon y dejaron pr. librar y escapar sus vidas en medio de que dejaron en ellas sus hazdas. ajuar ropa y alajas de casa

43 semillas sementeras y ganados perdidos aprovechandose de todo los dhos. rebeldes alzados y en atenzn. de que estos dhos. que se hallan poblados de dha. nazn. Thana dejaron con ocasion de la mejora y fertilidad de tierras y para mr. seguridad de sus vidas sus pueblos por venir asi mismo juntamte. en compañía de los de la dha. nazn. de Teguas que es tan corta distancia se hallavan poblados y ellos mediante la dha. ocasion de lograr la mejoría de las dhas. tierras hallandose lo todo hecho se poblaron lod de San Xptobal desde luego en ellas y los de Sn. Lazaro siendo muchas las que tienen las leguas del pueblo dho. de San Juan de los Cavalleros y ser corte el numero de su Jentio de ambos y siendo frontera como lo es y entrada de los Apaches enemigos como de la nazn. de los Yutas tubieron a bien el admitirles y darles consentimto. con voluntad genl. de todos de que se poblasen como con efecto se poblaron y estubieron poblados en dho. Pueblo de Sn. Juan cuyo cuartel y casas de su vibienda se halla el dia de

hoy desocupado y en vie por haverse de pocos años desta parte pasado á poblar á las tierras y hazdas, que fueron y son de los dhos. Españoles donde al preste, y se hallan viven y estan poblados y pr. quanto conferi con los dhos. governadores do dhos. dos pueblos las dhas. razones espresadas y rl. voluntad y no teniendo yo, dho. gover. y capn. genl. por fixa la dha. notizia y poblazn. que tenien en pie los dhos. naturales del Pueblo de Sn. Lázaro en el dho. de Sn. Juan le habia consedido y señalado á su Gover. Dn. Xptobal Yope el puesto de Yunque para pasarse el hibierno que viene dejandole el permiso y consentimto, de que pudiese sembrar este año en dhas. tierras y siendo y teniendo donde poder pasarse luego con dha. su jente que se compone de diez y seis fams. y en todas ellas el numero de ciento y cincuenta y cinco personas segun me tiene dho. tiene empradonadas y constará de su padron el Reydo. Pe. Por. Frai Antonio Obregon su Pe. Ministro y Doctrino. y Guardian de dho. su conbento mando por este al dho. mi lugar thente, genl. con el dho. su Alcalde Mr. Matias Lujan e interprete nombrado les diga e insinue á dhos. naturales y dho. su Govor. Dn. Xptobal Yope se passen á poblarse en dho. su cuartel que tienen en el dho. Puo. de Sn. Juan dejaron y tubieron en el aun mas las tierras que les dieron y repartieron sus naturales y le doi al dho. mi lugar tente, genl. orden para si nezasario fuere su fabor y autoridad pase á dho. Pueblo de Sn. Juan con dho. Govr. Dn. Xptobal Yope y capitanes de la guerra y juntos los dhos. governadores y capitanes de la guerra de dhos. dos pueblos en la plaza les diga el dho. mi orden en virtud de la dha. rl. voluntad y esta hallarse tan justificada y legitimada de los dhos. Españoles para determinarla no siendo ynjusticia ni tirania el mandarles dejar las dhas. tierras y pueblo

44 fundado en ellas y en dho. su sitio quando tienen y se hallen casa segura donde pasarse en el quartel que les perteneze pr. suyo en dho. Pueblo de Sn. Juan y mas tener en el tierras bastantes de Riego y de temporal que estas las tienen conozidas y no es bien que á los dhos. Españoles se les haga la ynjusticia y agrabio deteniendo sus tierras seguras conozidas para mediante la voluntad divina prometerse por lo fertil de ellas crezidos frutos para mantenerse y asegurar su sustento sin experimentar en tierras no conozidas el riesgo de careser y faltarles sus bastimtos, que estos no se hallan aun con mucho costo asegurados entre dhos. naturales sino con la mengua y escasez de sus animos faltandoles la razon de de medida y tanto de su lexmo. precio de su valor y lo otro aresgar a que este de' nuebo lo padeciese la rl. corona y tambien el trabajo de romper para un año tierras silbestres y no conozidas por todo lo qual debo yo, dho. gover. y capn. genl., atender y mirar a tan lexmas. causas como a la de proxima entrada del suso dho. trozo y ramo de dha. jente y vecindad en el tiempo ya para hazer dha. sementera y no tenerle para romper tierras ni menos para disposicion de su alvergue y teniendole seguro en las dhas. sus tierras y sitios como la seguridad de hallarse con sus aseQUIAS seguras y rompidas no cabe en mi darles permiso a dhos. naturales de Sn. Lazaro para que este año las labren y siembren sino que desdo luego asi ellos como dho. Pueblo lo dejen desembarazado pasandose al dho. su quartel y casas de su viienda en el dho. Pueblo de Sn. Juan y en dhas. sus tierras asi mismo hagan sus sementeras y las dara de termino para mudarse sin descomponer ni deshazer las casas de dho. pueblo hasta la luna que entra del mes que viene y las pondra en en dha. con-

ziderazn. haver gozado tantos años de haver sembrado las dhas. tierras para no deberseles nada pr. razon del pueblo que dejan. Y tocante a los del Pueblo de Sn. Xptobal pasara mi dho. lugar thente. yendo en su compaña el dho. su alcalde mr. e ynterprete Matias Lujan y las dira a dho. govr. y capitanes de la guerra que pasen al dho. paraje de Simayo donde me pidieron el permiso para poderse poblar que les cumplire y guardare la palabra que les di en el todo y si se reconociere poder desde luego hazer sus sementeras en dha. tierra que pidieron y señalaron se les mandara con vista de ojos reconbenirles que yo les di el dho. permiso y palabra en su posesn. de no tener disposicion las dhas. tierras y nesecitar de tiempo para tenerla y ponerlas en el corriente desembrarlas pero que hallandose tenerle fazilmte. que los mandaba y haria la dha. mrd. debajo de la calidad de pasarse luego a la posesion asentando su poblazn.

45 y haziendo sus sementeras en dho. sitio y les dara de termino para salirse y mudarse de dho. su pueblo así mismo hasta la luna del mes que viene pues tenian tiempo bastante para ello y los dhos. vzos. españoles que han representado y les tengo echo mrd. pr. razon de alegar ser sus sitios y tierras en dho. puesto de Simayo pasen con dho. mi lugar thente. pa. qe. con asistencia de dho. govr. y naturales de dho. pue. de Sn. Xptobal el reconozimto. del sitio que me tienen pedido y tierras que les tengo concedidas q. son des. dho. pueblo para delante y ningunas para hazia el que dejan y camino que viene al dho. pue. de Sn. Xptobal pues con esta expesificazn. les hize la dha. mrd. y a los dhos. españoles advierto mando y ordeno al dho. mi lugar tente. no tengen con dhos. naturales contradizion pues prefiere mi palabra y importancia de el dho. pacto a la de la mrd. que les tengo echa pues eqn. le fuere incierta pr. ser echa debajo de la tierra señalada a los dhos. naturales y govr. del dho. pue. de Sn. Xptobal y así se les remunerare en otra parte y lugar de tanta estimazn. y a dhos. naturales les hara saber el dho. orden y mandara lo guarden cumplan y executen debajo del termino dho. segun las causas de justificazn. referidas y las que tubieren ellos q. representar me comparescan viniendo ante mi dho. govr. y capn. genl. á esta villa a darmelas y desirles que los oyre de palabra o por escrito dandole por mano del dho. su alcalde mr. e ynterprete Matias Lujan y para qe. conste de este dho. orden al dho. mi lugar tente. y para su execuzn. luego le provey firme con mi secreto. de govn. y gua. que esfecho en esta villa de Sta. Fe en diez y ocho dias de el mes de Marzo de este presente año de mill seis cientos noventa y cinco a qn. pr. mi mandado se le entrega original para que lo vuelva con la relacion de la execuzn. de su cumplimto. fecho vt supra.

D. DIEGO DE VARGAS ZAPATA LUJAN PONCE DE LEON. [Rúbrica.]
Ante mi:

ALPHONSSO RAELE DE AGUILAR, [Rúbrica.]
Seco. de Gon. y Guu.

46

Salida de esta villa de Sta. Fe.

En esta villa de Sta. Fe, en veyente dias del mes de Marzo de mill seis cientos noventa y cinco años, y el Mrl. de Campo Luis Granillo, Thente. de Govr. y Capn. Genl. de este Reyno de la Nueva Mexico., en cumplimto. y obedezimto. del orden y mandamto. de la vuelta del Sor.

Govr. y Capn. Genl. de este dho. Reyno, que lo es el Sr. Dn. Diego de Vargas Zapata Lujan Ponce de Leon, restauror. conqor. y castellano de sus fuerzas y presidios de el por su Magd., sali desde dha. villa en compaña de el Sargto. Ju. Ruiz de Casares y a distancia de dos leguas largas de ella antes de llegar al puo. de Tesuque de los Teguas esta la Hazda. q. vide arruinada q. fue del Mrl. de Campo Franco. Gomez en la qual solo tiene tierras de labor para un poblador por ser corto el riego y alcanza como terreno montuoso y el ganado de la cortedad del posible de un solo dueño y passe saliendo del dho. puo. de Tesuque via recta a San Lazaro que es el Puo. contenido de dho. mandamto. y para dar su debido cumplimto. hize juntar a su Govr. y Casique Dn. Xptobal Yope a los viejos y principales y los mas de los naturales de dho. puo. de nazn. Thana y con asistencia de su alcalde mayr. q. es lengua el suso dho. Sargto. Ju. Ruiz por serlo tamvien hizo officio de ynterprete y le ley dho. mandamto. para q. en dha. su lengua Thana de berbo ad verbum como lo hizo se lo diese a entender y todos respondieron q. obedeserian segun me tenian pedido y hecho Merzdl. del sitio para poblarse de nuevo en el paraje y fin de la cañada q. dicen de Zimayo junto a la cierra y para su reconozimto. y executar el orden referido en dho. mandamto. les mande el dia de mañana fuessen en mi compa. para haser la vista de ojos y mas se le avisase asi mismo como ynteresado y hallarse ynmediato al Govr. de Sn. Xptobal, principales y naturales de el y para que conste de lo referido lo puse por diligencia y firme fecho vt supra.

LUIS GRANILLO. [Rúbrica.]

- 47 Pasa dho. thete. genl. con los gobernadores de los puos., que se refieren el reconocimto. del sitio señalado de Zimayo, de que les tiene hecho merced dho. Sr. Govr. y Capn. Genl. de este Rno. para su Puo.

En veinte y un dias del preste. mes de Marzo de la *la* feha. y año, yo, dho. thte. de Governr. y Captn. Genl., sali de este dho. puo. de San Lazaro con los dhos. Alcalde Mayr. y Sargto. y asi mismo dho. su Governr. y Yndios mandones y los mas de los naturales como asi mismo los del puo. de San Xptobal con su Govr. yendo juntamte. con ellos y con migo dho. The. Generl., su ministro doctrino q. lo es Fr. Antonio Obregon, y a distancia de dos leguas largas haviendo ydo por la cañada y pasado un arroyo riachuelo pequeño que baja de dha. sierra y alinda con la hazienda del Capn. Ju. Luis Rio Arriva y haviendo andado poco mas al parezer de media legua se halla una ruina sobre mano yzquierda los dhos. Yndios gobernadores y casiques me señalaron ser el puesto de llano q. ay junto a dha. ruina, el qual es una cañada ancha y capaz para formar dho. su puo. con bastantes tierras para riego por gosar de los arroyos y riachuelos que bajan de dha. sierra y reconoci juntamte. la saca del agua y pressa y me señalaron dhos. Yndios y ser el dho. riachuelo de rraudal de agua bastante y permanente y bolbiendo a dho. llano los dhos. Yndios bolvieron a repetir y deslindar ser el suso dho. puesto, el que a dho. Govr. y Capn. Genl. le havian pedido y les havia otorgado y concedido la dha. merzdl. y hizieron la traza para la dha. fundacion diziendo ser el mismo de sesenta y ocho casas para q. pudiesen avitar la jente de los dhos. dos puos. y agragandose los Yndios Thanos y mugeres cautivas q. escaparon de la

villa de Santa Fe en caso de ser su voluntad de venir con ellos las admitirian y recibirian dandoles y señalandoles dhas. tierras quedando gustosos de haver reconocido y visto con dha. atencion el dho. sitio y puesto para la planta y asiento de dho. su pueblo y para q. conste lo puse por diligencia y firme fha. vt supra.

LUIS GRANILLO. [Rúbrica.]

48 Sale dho. Thte. Genl. por la cañada pa. hacia los. puo. de Sn. Ju. y pasa a la otra banda del Rio del Norte a dormir a Sta. Clara.

Y luego incontinentemente en dho. dia mes y año, yo, dho. Lugar Thete. Genl., tome la vuelta y deresera por cumplir con el thenor del mandamto. y orden referido saliendoa recono cinto. de las hazdas. q. se hallavan pobladas y ranchos q. decian de la Cañada de Los Vezos. q. se hallavan antes de la sublevacion genl. de este Rno. y a distancia de media legua y al lindero de dha. hazda. del. Capn. Ju. Luis q. tiene el puesto suso dho. de la dha. merzd. de dhos. Yndios esta reconoci y halle la estancia q. hera de los Martines cuyas ruinas estan de las paderes vivas y en ella vivian pobladas con sus ranchos zinco Vezos. con sus familias por tener tierras bastantes y pastos hazia el norte y haviendo andado por dho. rumbo como tres quartas de leguas halle la deresera sobre mano izquierda el suso dho. puo. de Sn. Lazaro y pasande el Rio del Norte sobre mano derecha halle y vide la hezda. q. fue de Miguel Lujan cuyas de dhas. casas se mantienen y en ella solo vivio el dho. con su familia por tener tierras solo de labor y riego bastante para una familia y los pastos en la cortedad del ganado q. hubiere de todo genero y delinda asi mismo con esta hazda. otra fuerte y labor de tierras q. sembrava Marcos de Herrera, cuya familia tenia en otra hazienda mas abajo y dha. labor tendra casi la misma tierra q. la antezedente y dha. y a esta se sigue otra suerte y labor de tierras q. fue de Nicolas de la Cruz, cuya casa se mantiene en pie de dha. su viuda y siendo solo las tierras las nezzearias para mantener la dha. su familia y los pastos en dha. calidad y a esta se sigue la labor q. fue de Melchor de Archuleta, cuya ruina de su casa solo ay y se reconoce siendo casi las mismas tierras para una familia y en dha. firma los dhos. pastos, y se siguen en dha. tabla y y vega otra hazda. que fue de Ju. Griego q. asta es mayor suerte de tierra q. ninguna de las dhas. por tener mucho sitio y asi podran vivir en el dos familias dividiendoles la dha. tierra de labor y los pastos por ambos y asi mismo se sigue otra hazda. q. fue de Sevan. Gonzales y y poseye el Capn. Alonso del Rio y en esta tenian parte otros dos de suerte q. caven y se pueden poblar en dho. sitio tres familias y ser sus tierras de mayor calidad; y se sigue la hazda. que fue de Franco. Xavier arruynadas las casas y en pie un torreoncillo y aun que el la vivio solo tiene el sitio tierras para dos familias muy sobradamente. Y a esta se sigue la de Pedro de la Cruz, de cuya casa se halla en ser un

49 aposento y tiene tierras solo para un vezno. con su familia. Y haviendose acavado de dar vista yo, dho. thete. genl., a las dichas hazdas. expresadas passe a la otra parte del arroyo q. se halla en el medio de ellas y baja dha. Cañada y se halla el Rio del Norte sobre mano derecha y reconoci las hazdas. siguientes: Primte. se halla inmediata a dho. arroyo la hazda. q. fue de Bare. Monttya y solo se reconoce las ruynas de la casa en q. vivio y solo tambien tiene tierras para un vezno. con su familia y asi mismo se halla adjunta otra hazda. q. fue de Diego Lopez y se mantiene

un torreón q. tenía junto a dha. casa siendo sus tierras tan solamente pa. un vezino con su familia y se sigue otra hazda. q. fue de Marcos de Herrera y dha. hazda. solo tiene tierra para un vezno. con su familia, cuya casa por estar inmediata a este dho. arroyo o riachuelo se la llevo en un creziente grande q. trajo, y se sigue otra suerte de tierras de labor q. tenía y pertenecía el comut. del puo. de Sta. Clara. Y a esta se sigue la hazda. que fue del Mre. de Campo Franco. Gomez y solo la señal de los zimytos. de la casa q. tubo se reconocen y solo puede sobradamente. vivir en ella un vezno. con su familia. Y se sigue la hazda. q. de Ambrosio Saez, en cuya parte de sus casas se hallan aberse rancheado como lo estuvieron el año pasado de mill seis cientos y noventa y quatro parte de los Yndios Theguas reveldes del pueblo de Tezuque por gosar de sembrar las dhas. cierras y por dha. razón se hallan viviendas buenas y en esta dha. hacienda se pueden poblar dos otros vezos. a su pareser otros vezos. a su pareser con sus familias. Y así mismo se halla en dha. vega en el medio la hacienda donde estubo poblado Augn. Romero en el tiempo de la sementera por tener su labor en dho. sitio donde puede vivir muy bien un vezno con su familia y así mismo bajando a la frente del Río del Norte y mesa de Sn. Ildephonso, cuya ruina de dha. casa se reconoce y solo su tierra es la suficiente para un vezno. con su familia y son dhas. hazdas. las q. se hallan como dho. es desde dha. boca de la Cañada segun se refieren con sus dueños q. en ellas vivieron y estuvieron pobladas y me retire yo, dho. the. genl., con dho. Sargto. Ju. Ruiz, q. asisto juntamente conmigo al dho. reconozimto. y conoze los dhos. puestos por haver vivido siempre inmediato de ellos y haberse criado y ser hecha dha. relacion zierta y segura y para q. conste lo puse por diligencia q. firme pasando a dormir al puo. de Sta. Clara fecha vt supra.

LUIS GRANILLO. [Rúbrica.]

50 Llega. a la villa de Sta. Fe de dho. Thte. Genl. donde en ell debuelbe el mandamto. a dho. Govr. y Capn. Genl. con las diligencias fhas. su cumplimto.

En veyte. y tres dias del preste. mes de la fha. y año, yo, dho. lugar theyte. generl. haviendo llegdo. a esta villa de Santa Fe di quenta de las diligencias antezedentes a dho. Govr. y Capn. Genl. de este dho. Rno. el Sr. Dn. Diego de Vargas Zapata Lujan Ponse de Leon y originales en su mano con su mandamto. y orden de su Señoria se las deje y entregue y para q. conste lo firme con el dho. Govr. y Capn. Genl. y con asistencia. de su Secro. de Gono. y Guerra.

DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

LUIS GRANILLO. [Rúbrica.]

Ante mi:

ALPHONSSO RAEI. DE AGUILAR. [Rúbrica.]

Secro. de Goro. y Gurn.

51 Petizn. de la nazn. Thana de los puos. de Sn. Lazaro y San Christobal.

SOR. GOVR. y CAPN. GENL.:

Los gobernadores de los pueblos de Sn. Lazaro y Sn. Xptobal de nazon Tanos por si y en nombre de la vecindad de dhos. pueblos ante

Vs. parecemos en la mejor forma que ayga lugar en dry. y decimos que Vs. fue servido de mandarnos mudar de los dhos. pueblos para polarlos de Españoles, y nosotros suplicamos a Vs. nos diese lugar a poder sembrar en las dhas. tierras que en ellos ay abiertas este año baliendonos así mismo de sus zequias q. lo estan y q. alsada que fuese la cosecha desembarcariamos dhos. para q. Vs. los poblase a su voluntad. La qual suplica fue Vs. servido concedernos y con ella nos hallabamos gustosos, y oy ha llegado a nra. noticia esta Vs. en animo de mandarnos ir a poblar y sembrar luego a otra parte atentos a lo qual ponemos en la consideracion de Vs. los trabajos en que al preste. nos hallamos, pues no tenemos (como es notorio) ningun maiz que es todò nuro. alimento y ya no solamte. lo hallamos sino q. para mantenernos hasta aora nos hemos deseño de nra. ropa malbaratandola y tambien por tener semilla para sembrar este año y que donde quiera que intentemos ir a poblar y sembrar es necesario ocuparse todo el tiempo la gente de dhos. dos pueblos en abrir las tierras y zequias; cosa imposible pr. este año a respecto de no tener con que mantenernos y haverlo de salirle a buscar con lo qual no se remedia el daño preste. ni el futuro eminente y atentos a todo lo referido puestos a los pies de Vs. con el rendimto. devido le suplicamos y pedimos se sirva de atender a nra. necesidad y el remedio de ella que estriba solo en mantener Vs. su palabra y se sirva de darnos de que este año sembrariamos en estos pueblos. Pues de nra. pte. estamos promptos a luego q. se coja las cosechas desembarazarlos en que esperamos recibir de la poderosa mano de Vs. todo favor y merced como lo hemos experimentado en cosas de su mayor entidad que es justa. q. así mismo pedimos y para ello, &c.

LOS GOVORES. TANOS DE SN. LAZARO Y SN. CHRISTOBAL.

- 52 Presentazn. de la peton. de arriba por los Capns. de la guerra por sí y en nombre de la naz. Thana de los Puos. de Sn. Lazaro y San Christobal.

En esta villa de Sta. Fe, en veyte. dias del mes de Marzo de mill seis cientos noventa y cinco años, ante mi, Dn. Diego Vargas Zapata Lujan Ponce de Leon, Govr. y Capn. Genl. deste Reno. y Provincias de la Nue. Mexco., su nuevo restaurador, conqor. a su costa y reconqor. y poblador y castellano de sus fuerzas y presidios por su Magd., &a.

Auto: La presentaron los capitanes de la guerra de los naturales de la nazn. Thana de los dhos. pueblos de Sn. Lazaro y San Xptobal. y por quanto tengo dada la orden a mi lugar thte. genl. mando se guarde cumpla y execute pues solo podra dispensar el que los Indios del primero puo. de Sn. Lazaro de no ser su voluntad de venirse y incorporarse con los de el puo. de Sn. Juan de los Caballeros donde vinieron primero y dejaron su quartel o de bolverse a su puo. antiguo q. dejaron y tenian y tubieron antes de la sublezn. genl. de este reyno el año de ochenta y despues de ella vivieron ms. años. q. se estrechen y acomoden a vivir juntos en dho. puo. segundo de Sn. Xtobal. y así mismo en sus tierras hagan sus sementeras extendiendose hasta la dha. cañada de Zimayo y hazda. de Moraga donde el año pasado por razon de su segundo alsamto. lo hizieron y tubieron sus milpas y no ay razon para q. temiendo tierras propias conocidos los españoles q. subsistan y se esperan entren de afuera para

ampliar la poblacion asegurando con ella la restauracion y reconqta. de este dho. Reyno lo uno se arriesgue a q. su Magd. el Rey ntro. Sr. (q. Dios gue.) no logre su real deseo y lo otro pierda el pasto echo para ello de su real haber no dandoles tierras dispuestas y conocidas para asegurar sus sementeras y con ellas su conservacn. razones para no poder de su parte dejar a dho. accidente exezpuesta empresa de tal magnitud y mas me deve hazer fuerza dificultandola los dhos. naturales el no tener las dhas. tierras en corrte. y asi la gracia permitida y tolerada de dejarles la mitad pertenecientes asi mismo con el otro puo. dho. de Sn. Xptobal. es y deve ser para ellos reconocida de estimacion y fineza con q. se atiende a su alivio y para que conste deste dho. auto se ponge con el pedimento de dhos. naturales del proveyno en los autos y diligencias q. en virtud de dho. mandaymto. dho. mi lugar thete. de Govr. y Capn. Genl. trasfiere fhas. y se le participe su exen. y para en todo tiempo dar la resoluon. q. el tiempo pide y le firm een esta dha. Va. con mi seerio. de gon. y gua. en dho. dia fha. vt supra.

DIEGO DE VARGAS ZAPATA LUJAN PONCE DE LEON. [Rúbrica.]

53 Ante mi :

ALPHONSSO RUEL DE AGLR., [Rúbrica.]

Secro. de Gorenio. y Guerra.

Sr. Govr. y Capn. Genl. deste Reyno de la Nueva Mexico. Los pueblos de Sn. Lazo. y Sn. Christobal de nacion Tanos.

54 Vando incluso en el la merzd. con que se señala á las famas. de los Mexnos. españoles y se les señala con titulo de Villa Nueva de Sta. Cruz, &a., segn. se refiere y calida de como causas que se expresan para su execuzn.

Don Diego de Vargas Zapata Lujan Ponze de Leon, Gover. y Capn. Genl. de este Rno. y provas. de la na. Mexico., su nuevo restaurador conqdor. á su costa reconqdor. y poblador en el castellano de sus fuerzas y presos. por Su Magd., &a.

Haudo. los Indios Thanos del pueblo de San Lazaro en virtud de mi mandamto. y orden en el expresado despachado para su execuzn. y cometido su devido cumplimto: en vte. de Marzo pasado de este preste. año de la fecha á mi lugar thente. de Govr. y Capn. Genl. que lo es el Mro. de Campo Luis Granillo que consta las diligas. que en virtud de dho. mandamto. hizo y los dhos. Indios haver con sus gobernadores conferido y pedidome la merzd. de el sitio de la Cañada de Tzimayo y dejadome los dhos. pueblos de Sn. Lazaro y San Xptobal y haver el de Sn. Lazaro conseguido lo dejen para emplear y ocuparlo con las familias. que el Exmo. Sr. Virrey Conde de Galve de todo el Rno. de la Na. España remitió para la poblacion de este dho. Rno. de la Na. Mexico. y entraron en vte. y tres de Junio de el año pasado de mill seiscientos y noventa y quatro siendo su numo. el que p. la muestra y lista para darles vivienda ynterin que se aseguraba dho. Rno. las que se reconocieron haver entrado en esta dha. villa de Sta. Fee y ser fuerza de sesenta famas. y media y para que se halle junta esta sin interpolacion de otra atendiendo a su union y que esten en compañía gustosa come haudo. venidos y ser de un mesmo lugar y tierra a esta dha. vecindad y numo.

de famas. la graduó en primer lugar y señalo el dho. pueblo sus casas de vivienda con sus tierras, limpias de labor, sanjas, azequias y presa o presas que los dhos. Indios naturales tubieron y tenian para su riego y seguridad de cojer sus frutos con mas les señalo y hago merzd. en nombre de Su Magd. de sus sacas de agua que dejan descubiertas y pudieren descubrir sus montes pastos cañadas que tenian y gosaban los dhos. naturales sin perjuizio de las hazdas. ranchos que caen en su pertenencia y distrito y todo el que alcanzare poder tener hasta los pueblos de Nambu Pujuaque Jacone San Ildephonso Sta. Clara y Sn. Juan de los Caballeros dandoles desde luego la posesion de las casas que pr. suyas en persona se la dare y dejare en ellas poblados con mas el titulo onorifico que en nombre de Su Magd. le doi al de dha. vezindad de villa de Sta. Cruz de Españoles Mexnos. del Rey Nro. Sr. Carlos Segundo a los quales

55 asi declaro eszeptos y graduó en la primera poblazn. nueva y como tal dever gozar la antigüedad. de pobladores entendiendose ser la primitiva la de esta villa de Sta. Fee donde en ella solo se entienda la eleccion de los capitulares del Illtre. Caud. y tener cada uno de por si su justicia que se conponga de Alcalde Mr. y Capn. a Guerra y Tente. con titulo de Capn. de Milizia su Alferéz y Sarxto. reduzido la dha. vecindad a quatro cabos de esquadra y su alguacil de la guerra que asista asi mismo a la salida y reconocimto. de la campaña con dho. Capn. de Milizia y demas ofs. alternandose al mes y asi con este modo y forma de gobierno le han de tener para su resguardo y viban en politica y gobierno militar por ser frontera y para que llegue a noticia de la dha. vezindad de Españoles Mexnos. de dha. villa nueva que se les señala mando se publique en la dha. forma para q. reconozcan con la devida atencion que yo, dho. Govr. y Capn. Genl., les he recibido en este dho. Rno. y mejorado con la estimazn. de mi reverente atencion a la de la promesa del vando mandado promulgar del suso dho. Sr. Exmo. Virrey Conde de Galve pues en el les ofrecio y mando me ordenaria les señalase y diese tierras y sitio pa. labrar sus casas y yo les doy un todo su mejora conozida pues desde luego les señalo tierras rompidas y limpias y conozidas pr. su mucha fertilidad con mas sus sanjas azequias y presas en corriente con el riego de sus aguas aseguradas asi mismo sus casas nuevas pr. serlo dho. puo. y no tener mas que entrar desde luego a vivirlas y a disponer sus tierras que le señalare haciendoles merzd. de sus ranchos y haciendas a los que se hallaren tener pr. major la division y darles mas desaogo y poderle tener para la vecindad que se le aumentare y agregar y Su Magd. el Rey Nro. Sr., que Dios ge., con dha. nota. fuere servido de mandar ampliar como asi mesmo a los que a mi dho. Govr. y Capn. Genl. me pareciere poner y poblar y añadir el numero q. se conoziere ser conveniente que este se hara de la jente tambien que voluntaria se quisiere y me pidiere pr. merzd. le señale pr. poblador de dha. villa por gozar de dho. fuero y privilegio y para que conste y se hallen prevenidos para salir de esta villa de Sta. Fee les señalo el jueves a las diez de la mañana poniendo en la plaza de esta fuerza las mulas de carga con que me hallo y asi mesmo suplir de algunas vestias cavallares para montar en parte a los que no las tubieren y el todo ayudarles asegurandoles el que no les faltare con la asistencia de su racion de carne y maiz y mas con el de su siembra que les señala y ofresco dar dar el de media fanega a cada fama. y vezo. de ella y asi mesmo los instrumtos. de coas grandes de yerro palas azadones y hachas ynterin que

56 lleguen las que tiene ordenado y mandado pr. factoria dho. Exmo. Sr. Virrey se les remita tambien dar á su Alcalde Mr. y Capn. á Guerra que les nombrare la provision de armas de fuego corrientes municiones de pólvora y valas de suerte que en el todo se hallen con la prevenzn. nezesá. y para que les sirva de dha. fundazion y de bastante titulo este dho. vando y lo en el expresado mando se publique a usanza de guerra con sus instrumentos. militares asistiendo a el sus cabos y ofs. con. dho. mi lugar thente. de Govr. y Capn. Genl. dandose la parte al cuerpo que se hallare de el illustre Caydo. de esta villa pa. que con su asistencia y la de su escribano y con la de mi secreto. de Govn. y Gua. se publique en esta plaza y la de afuera y lo firme en esta dha. villa de Sta. Fee en diez y nueve dias del mes de Abril de mill ses. noventa y cinco.

DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

Por mdo. del Govr. y Capn. General.

ALPHONSSO RAEI. DE AGUILAR, [Rúbrica.]

Secro. de Govno. y Gua.

En esta villa de Sta. Fee en diez y nueve dias del mes de Abril de mill y seisos. y noventa y cinco as. yo, el Capn. Alphonsso Rael. de Aguilar, scero. de Gono. y Gua., doy fee como cy dho. dia se puo. este dho. bando en las dos Plazas pcas. de este dha. villa haviendo mucho concurso de gente en ellas en altas e inteligibles voces de Seban. Rodriguez negro tambor y para qe. conste lo firme.

ALPHONSSO RAEI. DE AGUILAR. [Rúbrica.]

57 Sale de esta Va. de Sta. Fee la vezindad Mexna. señalada para la Va. nua. de Sta. Cruz.

En veyte y un dias del preste. mes de Abril de dho. año de mill seis cientos y noventa y cinco a la ora del bando señalado y nombramto. en el expresado del titulo de Villa nueva de Sta. Cruz de el Rey N. Sr. Dn. Carlos Segundo de los Españoles Mexnos. de las sesenta familias q. se hallan en esta Va. de Sta. Fee, salieron a las nueve de la mañana a vecindarse y poblarse con lo dispuesto en dho. vando y para q. conste de su salida y lo fire. con mi secro. de gov. y guerra.

DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

Ante mi:

ALPHONSSO RAEI. DE AGUILAR. [Rúbrica.]

Secro. de Govno. y Guerra.

58 Llegada a la Villa Nueva de Sta. Cruz.

En veyte. y dos dias de dho. mes de abril de la fha. y año, yo, dho. Govr. y Capn. Genl. Dn. Diego Vargas Zapata Lujan Ponze de Leon de este reyno y proas. de la Nua. Mexico. por su Magd. nr. sr. havydo. llegado a esta villa nueva de Santa Cruz de los Mexcos. Españoles del Rey nro. Sr. Dn. Carlos Segundo así denominada y puesta por mi dho. Goverdor. y Capn. General haviendo sido su sitio y poblazon. el que por mi mandado dejaron la nazn. de los Thanos q. heran del puo. de San

Lazaro Mandole el titulo de la adbocazn. de dho. Santo y de dha. diligenza, consta del orden del mandamyto. puesto por cabeza de estos autos y haviendo llegado antes con su alcalde mr. y capn. a guerra nombrado como los demas de dho. bando y titulo de villa en el referido mandado publicar el dia diez y nuebe del preste. mes de la fha. y año se hallava puesta en ala con dho. su captn. y demas ofzs. señalados y nombrados y estaban a la entrada de la plaza de dha. villa y desmontado en ella lo hize junto a la capilla q. servia de inglesia a los naturales de dho. pueblo y haviendose por mi mandado puesto en forma de media luna la dha. venzidad estando a mi lado el alferéz rl. en frente con el rl. estandarte con mi lugarthente. y mi seco. de govno. y guerra hize salir de dha. lignia el dho. alcalde mayr. y capn. a guerra q. lo es el Sargto. Mayor Anto. Jorge y a su The. y Capt. de Milizia el Sargto. Nicolas Ortiz y a su Alferéz Joseph Valdez y Sergto. Manuel Balleja y Alguasil de la Guerra Anto. Godínez y los quatro cavos de Esquadra sigutes: Don Joseph del Balle, Sevan. de Salas, Migl. Fajardo, — Bustos, a todos los quales por mi dho. goveror. y capn. genl. señalados y nombrados por cuerpo de gobierno politico y militar por frontera donde se halla el dho. puesto de dha. villa les requeri y mande hiziesen. (On margin: Posesion y juramento de dha. villa.) el juramento de jurada aseptando el dho. puesto y poblazon q. en el usan por villa nueva de su mesma nazon de los Mexnos. Españoles del Rey Nr. Sr. Dn. Carlos Segundo y como sus leales vasallos de mantenerlo conserbarlo perdiendo la vida antes q. rendirse, a lo qual respondieron dabajo del dho. juramto. a, i lo aseptaban cumplirian y guardarian y de nuevo led hize merzdl. mediante la dha. aseptazn. y juramto. rebalidandoles sus tierras que les pertenezen y terminos deslindados y que caen a los pueblos dhos. en dho. bando de merzdl. y mas los que caen a las Haziendas y ranchos deslindados de su distrito y jurisdizn. en perjuicio del termino de sus terras q. les perteneze a cada uno y q. mas para q. se alentasen les hazia merzdl. de todos los minerales qe. se jusgen se hallan en la sierra de Zimayo q. segun los descubriesen en todo cumpliria y les guaradia las rls. ordenanzas dispuestas per su Magd. q. se alentasen para ello y tubiesen los pensamyto. altivos que de mi parte estaria el fomite segun los efectos y asimesmo hallandose en. dha. plaza y junto a dha. capilla al mui Rdo. Pe. Fr. Franco de Vargas juez eclesiastico yncapitte de este dho. rno. y su custodio en esta dha. custa. y concurso juntamente treendo en su compa. a el Rdo. Be. Predicor. misionero Fr. Antto. Moreno a quien eligio para guardian y ministro y yo dho. Govor. y Capt. Genl. las dije a dhos. Vezos. q. en dha. atenzon. y siendo capellan de su Magd. se le ponía y dejava per dho. su guardian y como a tal dava la poseson de dicha capilla para q. ynterin. q. reedificavan su iglesia les sirviese de parrochia y asi le di la poseson. a dho. pe. rd. de ella en dha. señal entrandole de la mano y componiendo el altar saliendo y entrando y para su mayor solemnidad y fuerza de pesesson. dada y juramto. hecho de dha. villa sali de dho. mi questo con dho. alfrz. rl. y mi lugarthete. mandando pasar al centro y medio de la plaza a mi alfrz. rl. juntamte. con mi seco. de govno. y gua. para q. recitase dizdo. como defendia y sustentava ser aquella posesson. dada a favor de su Magd. en dho. puto. lugar y sitio de merzdl. de terminos y limites por mi dho. Govor. y Capt. Genl. asi mismo dados y concedidos en dho. rl. nombre a dha. vezindad con el titulo onorifico y puesto de Villa Nueva de Españoles Mexicanos del

Rey Nr. Sr. Don Carlos Segdo. q. salia a defenderla como la defendéria hasta perder la vida y que así con la espada en la mo. y desnuda la sustentaria y sustentava citando a quien lo contradiziese y todos a una vez y por jamas de mi dho. Govor. y Capn. Genl. como leal y leales vasallos de su Magd. aclamo y aclamaron dizdo. Viva el Rey Ntro. Sr. que Dios guae. el Señor Don Carlos Segundo, Rey de los Españoles y de tode este nuevo mundo y de esta nueva villa q. en su rl. nombre se fundo con el título de villa nueva de las Mexnos. y Españoles y a favor de su rl. corona se augmta, funda y puebla q. viva per muchos años y reyne en aumento de mayores, señorios, y monarchias, and haviendo repetido por tres veces la dha. aclamon. tirando los sombreros para ariva se dispararon tres cargas zerradas en dho. tiempo dandome la enhora bue. los dhos. vezos, de dejarlos poblados con tales onores y demonstracion de estimacion y jubilo pidiendome por merzd. las diera testimo. y se les mandase dar así de la dha. pesson. en dha. forma referida como del vando y calidad de su título en el especificado pa. q. le sirviese de tenerle por tal de dha. su villa y para q. conste le firmaon. conmigo los dhos. juntamente. con mi lugarthete. de Govno. y Capt. Genl. y mi Secro. de Govno. y Guerra.

D. DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON.

El Sargento MANL. BALLEJO.

ANTONIO JORGE.

LOUIS GRANILLO.

ANTTO. BALVERDE DE COSSIO,

El Alférez Rl.

Ante mi :

ALPHONSSO RAEI DE AGUILAR. [Rubrica.]

Secro. de Gorno. y guerra.

61 Deja orden dho. govr. y capn. genl. a dho. lugr. thete. para q. reparta las tierras sueltas que caen a dha. vecindad.

En esta villa de Sta. Fee, en veinte y tres dias del mes de Abril de mill sos. noventa y zineo, as. vo, dho. govr. y capn. genl., siendo forzosa la asistencia de mi persona en la villa de Sta. Fee y tener que pasar a los Pueblos de Sn. Xptobal y Nambe, ordeno y dejó ordenado a mi lugar thente. de govr. y capn. genl. que las tierras sueltas y de el distrito y pertenencia de esta dha. villa nueva de Sta. Cruz havdo. juntado su vecindad y reconocido a la que se halla asegurada y favorecida con la merzd. de los sitios y ranchos deslindados a la q. sin tener dhas. merzdes. asta las de y las reparta en las dhas. tierras sueltas señalandoles de ella la q. reconociere ser precisa pa. sembrar cada vezo. de su fama. media fanega de maiz y en ella emplee las demas semillas con q. se hallare y dho. repartimto. haga dejando gustosa la dha. pte. interesada y de las q. sobrenen me dara quenta y para q. conste en este dho. auto dha. orden lo puse por diliga. que firme juntamente. mi thete. con mi secretario de govn. y gua.

D. DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

Ante mi :

ALPHONSSO RAEI DE AGUILAR, [Rúbrica.]

Secro. de Gorn. y Guerra.

- 62 Entrada de dho. govr. y capn. genl. en el Pueblo de Sn. Xptobal y denuedo requiere a los naturales Thanos de el la siembra y sus frutos los ensieren en el nuebo que reedificaren en dho. sitio de Tzimayo para poblarlo de Españoles el mes de Octe.

Y luego ynconenti en dho. dia, mes y año de la fha. havdo. yo, dho. govr. y capn. genl., repetido a los dhos. Españoles Mexicanos de la suso dha. villa nueba de Sta. Cruz el suso dho. orden me despedi y pase a este Pueblo de Sn. Xptobal adonde en su plasa hallava todo su jentio unido con con el que tenia el que dejaron en dha. villa nueba poblada y les repeti y requeri la merzd. que les havia conzedido en el permiso de pasar este verano en el haziendo en sus tierras sus siembras y que sus frutos que Dios Nr. Sr. fuere serbido de darles y cojiesen les mandaba los llebasen de una ves al pueblo nuevo que en este dho. verano habian de reedificar pues para el mes de Octe. havian de estar en el dejandome dezembarazado el dho. en que se hallaban de Sn. Xptobal para poblarlo de Españoles segun havia dejado el antecedente y respondieron asi lo harian y abiendoles debuelto de nuebo a repetir la merzd. a su favor echo en dho. sitio de Tzimayo me despedi dejandoles gustosos y para que conste lo puse por diligencia q. firme con el dho. mi secro. de govn. y guerra.

D. DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

Ante mi:

ALPHONSSO RAEI DE AGUILAR, [Rúbrica.]
Secro. de Gorn. y Guerra.

- 63 Pasa dho. govr. y capn. genl. al Pueblo de Nambe y en el de la posesion al Mtro. Misionero. q. queda per doctrino. juntamte.

En dho. dia vte. tres de Abril de la fha. y año yo, dho. govrnor. y capn. genl., havdo. eligido ministro doctrino, el Muy Revdo. Pe. Custo. Frai Franco. de Vargas, para la mision de los Teguas del Pueblo de Nambe pase en su compañia para darle la posesion y havdo. entrado en dho. pueblo su jentio se hallava junto y la recibirme con toda politica y estando en frente del quartel principal donde tenian la capilla señalada y casa adjunta a ella pa. dho. mintro. me desmonte y mediante interprete les dije qe. les tenia y venia a poner al pe. que les havia de asistir y administrar les Santos Sacramentos. que lo es el Redo. Pe. Per. Antonio de Azevedo y en la forma referida le di la posesion de dha. capilla y casa y en señal de ella mda. rezar y cantar el alavadosea, &c., pr. tres vezes y mde. a los dhos. Yndios en todo le asisten y cumpliesen con su obligon. y la de Xtianos y no faltasen en nada y para q. conste de dha. posesion y de dhos. natureles responden en todo guardaran y cumpliran lo que les mdo. lo firme juntamte. con mi secto. de govno. y gua.

D. DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

Ante mi:

ALPHONSSO RAEI DE AGUILAR, [Rúbrica.]
Secto. de Gorno. y Guerra.

64 Llegada de las famas. que de orden de su exa. el exmo. sr. conde de Galve se han conseguido y adquirido pr. el Capn. Juan Paez Hurtado su cavo comiso. nombrado por mi, dho. govr. y capn. genl.

En esta villa de Sta. Fee cavesera de este rno. y provincias de la Nueva Mexico., en nueve dias del mes de Mayo de este preste. año de la fha. de mill sos. noventa y cinco as., llegaron a esta villa de Sta. Fee cavezera que lo es de este rno. y provas. de la Nueva Mexico. las familias que de orden del Exmo. Sr. Virrey Conde de Galve, con acuerdo de la junta genl. de señores Ministros de rl. hazda. y guerra en Marzo del año pasado de mill sos. noventa y quatro mando a mi, dho. govr. y capn. genl. de este dho. rno., remitiese cavo capn. y comiso. nombrado de mi satisfasion y teniendola del Capn. Juan Paez Hurtado le di la comision y nombramto. para executar el tenor del dho. mandamto. y orden resuelto en el pr. dho. Sr. Exmo. Virrey passando a los Rnos. de Galizia y en el Rl. de Zacatecas y otras partes y las familias que adquirio segun el pic de lista que consta fueron quarenta y quatro fas. a las quales yo, dho. govr. y capn. genl., en persona reconoci y di con asistencia del dho. su capn. cavo y comiso. el alojamto. en esta dha. villa en las casas que tenian dejaron la poblacion antezedente puesta y empleada en la nueva villa de Sta. Cruz y para q. conste de dha. entrada lo firme con el dho. capn. y cabo y comiso. y mi secreto. de govno. y guerra.

D. DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

Ante mi:

ALPHONSSO RAE DE AGUILAR. [Rúbrica.]

AUTO DE REMISION.

En esta dha. villa de Sta. Fee, en dho. dia de la fha. nueve de Mayo y año de mill sos. novta. y cinco, yo, dho. Govr. y Capn. Genl. Don Diego de Vargas Zapata Lujan Ponze de Leon, haviendo visto estos autos para que la conste a su Exa. el Exmo. Virrey Conde de Galve que lo es de todo el Rno. de la Nueva España lo obrado en este dho. rno. en el rl. servicio en que yo, dho. govr. y capn. genl., pongo el desvelo y esmero que me incumbe para su mayor agrado hazia remision de ellos, para lo qual mande a mi secretario de govno. y guerra trasumpte a la lettra el testimonio como asimesmo la carta de remision con este dho. autto para que concordado y trasumptado en devida forma se haga dha. remision y despacho a su exa. dho. Sr. Exmo. Virrey y mas quando tambien le motiba y prezisa la ocasion de el correo despachado en catorze de henero

65 de este preste. y dho. año de la fha. no ha llegado ni se sabe la causa de su dilasion y lo firme en esta dha. villa, en dho. dia, mes y año de la fha. juntamte. con mi secretario de govno. y guerro.

D. DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rúbrica.]

Ante mi:

ALPHONSSO RAE DE AGUILAR, [Rúbrica.]

Secro. de Govno. y Guerra.

66

EXMO. SEÑOR:

SEÑOR: Haviendo llegado a esta villa de Santa Fe el Capitan Juan Paez cabo comiso, porí mi nombrado para la conduccion de las familias que de orden de vexe, solicito y adquirio en la zitud de Zacatecas y entro en la plaza de esta dha. villa y fuerza quarenta y quatro familias que reconoci y passe muestra bajando para ello en persona juntamente a dha. plaza para darles el alojamiento en sus casas que desocuparon los bezinos Mexicanos de las sesenta familias que vexe, así mesmo remitió para la poblason de este reyno, y haviendo logrado mi deseo el que pudiera desear y pensar para el mayor y real servo. de su Magd. en la nueva villa por mí nuebamente fundada y poblada con titulo de Villa Nueva de Santa Cruz de los bezinos Mexicanos del Rey Nro. Señor Carlos Segundo en un pueblo que havian de neubo fundado los rebeldes de la nacion Thana en tierras que eran de los Espanoles y segun los motibos que discurri para materia y empresa tan difícil lo logre segun se reconociera por los mandamientos y demas diligencias de de cuyos autos y de ellas hago remision a vexe, por su testimonio que este bisto discurrido y considerado hallara en el dictamen de su grandesa lo favorable de mi fortuna y demas tener asegurada a distancia corta otra poblason de dha. nacion en mayor amplitud que esta desembarazada y libre la tengo asegurada así mesmo para el mes de Octubre que siendo Nro. Señor serbido fundare y poblare otra villa de estas dhas. familias de oy dia de la fha. recibidas y alojadas en esta de Santa Fee procurare siembren las unas y las ovtras para que puedan tener el alivio de no estar a la tasa de rasion como al presente viven en medio de la larguesa y magnificencia de vexe, que esto es cierto me ha serbido de mucho desbelo el acarreto de el maiz en parte puesto en esta dha. villa por lo dilatado que se halla del Reyno de la Viscaya y no tener otro recurso mas inmediato.

Tiene me confuso y cuidadoso el no haber llegado el correo a la fha. de esta que tengo remitido a vexe, desde catorze de henero pasado de este presente año de la fecha y así mesmo me motiba hacer este despacho para saber el fin de su dilacion como tambien si hubiere sido robado o muerto, y los dhos. despachos y ordenes que vexe, fuere servido de remitirme y probeer en su respuesta mandar de nuevo se me despachen para dar de mi parte el devido cumplinto, deseare juntamente que se halle vexe, con la respuesta de su Magd. el Rey Nro. Señor que Dios guarde para que con ella pueda deliberar en respuesta de mis cartas consultas remitidas por vexe, en su supremo y real consejo de Yndias que con dha. esperanza tengo entretenido a dha. bezindad para que con sus medios tengan el alivio de su conserbacion. Así mesmo quedan pobladas nuebamenta dos misiones Nambe y la dha. villa nueva, sirviendo el padre doctrinario al pueblo unido de los dhos. Thanos.

67 Hallandome en esta ocasion fuera de esta villa llegaron una rancheria de Apaches que estan al oriente y llaman de los Chiýenes y dieron razon en el pueblo donde entraron que es de nazon. Picuries como unos hombres blancos y rubios havian consumido una nacion muy grande de los Apaches conejeros que esta muy tierra adentro de la suy a y que se havian buelto; esta noticia me dio el alcalde mayor y padre ministro viniendome a ber y diciendole al alcalde mayor porque no me havia detenido el capitan de dha. rancheria, me respondió havia dicho bolberia con toda su gente a berme para Setiembre; y si Dios Nro. Sr. me diere vida, y biniere le

recibire la declaracion para segun ella hacer la estimacion o desprecio y no he querido dejar a vexe. esta noticia juntamente con lo referido, deseando en todo servir a vexe. cuya exma. persona guarde Nro. Señor en su mayor grandeza muchos y felizes años. Fecha. en esta villa de Santa Fee en nueve dias del mes de Mago de mill sos. y noventa y cinco años.

Exmo. Señor, &c.,

D. DIEGO DE VARGAS ZEPATA LUJAN PONZE DE LEON. [Rúbrica.]

68

Archives No. 882.

No. 340.

Proceedings had in the new town and settlement founded and called "The Exaltation of the Cross of the Mexicans of the King our Lord Don Charles II," established and obtained by the efforts of the governor and captain-general of this kingdom of New Mexico, its new restorer and conqueror, Don Diego de Vargas Zapata Lujan Ponze de Leon, a certified copy of the said proceedings having been sent on May 11, of the said year of 1695 to his excellency the viceroy, the Conde de Galve.

69

(Archive No. 882.) No. 340.

Don Diego de Vargas Zapata Lujan Ponze de Leon, governor and captain-general of this kingdom and provinces of New Mexico, its new restorer and conqueror at his own expense, and reconqueror and settler in the same, and castellan of its forces and garrisons, by His Majesty, etc.

It being now the time when a fixed place of residence must be given to the families which, on the part of His Majesty the King our Lord, whom may God preserve, in his royal name, by his excellency the viceroy, the Conde de Galve, over all the kingdom of New Spain governor and captain-general and president of the royal audience and court of the City of Mexico and of all this new world, and with the approval of the royal commission and the ministers of the same, have been sent, as well as the others brought by the said governor and captain-general to this kingdom, and all of which are now in this said city, and also as another lot and party are expected, and in order to give them a fixed place of settlement, land for cultivation of their crops, pastures, woods and waters, watering places, commons, and stock ranges, in order that they may have all that they need for raising their large and small stock of all kinds and classes; and I, having been informed of the same, and it being yhe royal will that I should be placed in charge of the whole in the matter of the location and settlement of the said parties, and that I should procure for such as I considered proper for the service, stability, permanency, security, comfort, and utility, seeking to find the same on lands separate and apart, if possible, from the natives of the tribes and pueblos of this said kingdom and the district of this said city, in order to avoid the troubles and vexations which would arise if they live together with the Spaniards; but, on the contrary, being separated, both would be at peace, and the said natives and Spaniards would live together in concord and harmony, in such manner that by kind and friendly treatment our holy faith might be implanted among them on a firm basis and with the hope that with

their example the adjoining barbarous tribes might be converted; and, with this view, I, the said governor and captain-general, having to duly carry out the royal will, which the said most excellent viceroy has so frequently and repeatedly communicated to me in the name of His Majesty, I have done what was necessary, and have not only gone over, passed through, and tried the entrances, exits, routes, courses, and distances, particularly and generally, of all this said kingdom, but

70 also a part of the lands of the tribe of the Utes, having entered with an army of the royal forces of His Majesty under my command as far as the last pueblo and tribe of the Taos of this said kingdom and come out at the mouth of the river Chama at the pueblo of San Juan de los Caballeros, distant ten leagues from the said city, and the said examination having been made as aforesaid by me, the said governor and captain-general, I found that the said place and settlement of the said party and of the other said party that is expected to arrive should be made of lands which belonged to the Spaniards, who abandoned and left them at the time of the general revolution, in the month of August, in the year 'eighty, in this kingdom, at the places and farms extending from this said city of Santa Fe to the pueblo of Tesuque, and those which extend beyond the pueblos of of San Ildefonso and Santa Clara, on the other side of the Rio del Norte, and, on this side, those which lie in front of the mesa de San Ildefonso and extend to the road which leads to the said pueblo of San Juan de los Caballeros, and those which extend to the pueblos established on the said farms, which are San Lazaro and San Cristoval, and those which extend from the latter in the direction of the highway which leads to Picuries, to the canada called the Hacienda de Moraga, and the farms of Captains Luis Martin and Juan Luis, in front of and at the place and tract of land called Chimayo; and in order that they be examined by my lieutenant-governor and captain-general, who is Colonel Luis Granillo, I order him to proceed with Sergeant Ruiz de Caceres, because he knows the language of the said tribe of the Teguas, to the two pueblos of the Thanos, San Lazaro and San Cristoval, with Matias Lujan, their alcalde mayor, because he is also an interpreter, to examine, in the first place, the said farms and places separately, making a map showing the names of the places and the names of their former owners, the quality of the lands, and the distances, and he will examine personally and will confer with the above mentioned as to the number of persons who can be settled on the same, giving them lands which they can cultivate and plant advantageously and without inconveniencing one another, with notification that the pastures of the tract and limits of each of the said farms shall be in common and not for individuals, and that the stock which each may have in greater or less number may feed on the same, and only in case of there being an equal number will it be permitted them to appear in order to petition that no one shall have more stock than another; and in this manner he will make the said demarcation, map, computation, and regulation; and in respect to the said two pueblos of San Lazaro and San Cristoval, they having

71 been established on the farms and lands which absolutely belonged and did belong to the said Spanish residents, who, because of the said general rebellion of the whole of this kingdom in the month of August, of the year eighty, abandoned and left them

in order to save their lives, and who left on their farms their household goods, clothing, wares, grain, growing crops, and stock, all of which were taken possession of by the said rebels; and in view of the fact that the aforesaid, of the said tribe of Thanos, left their pueblos, because of the improvements and the fertility of the lands and the greater security of their lives, and came together with those of the Teguas tribe, who were settled at so short a distance, and took advantage of the occasion to obtain the improvements on the said lands, everything being already completed, those of San Cristoval and those of San Lazaro settled upon them, the lands which the Teguas of the said pueblo of San Juan de los Caballeros hold being many, and the number of people of both being small, and it being on the frontier, as it is, and at the entrance of the Apache enemy, as well as that of the Ute tribe, they saw fit to admit them and give them the permission, with the general consent of all, to settle, as in effect they did settle and were settled in the said pueblo of San Juan, the land and dwelling houses of which are vacant and standing unoccupied to-day, because of their having been abandoned only a few years ago on account of their having gone to settle on the lands of the Spaniards, and where they are to-day living and settled; and whereas I have conferred with the said governors of the said pueblos in regard to the above reasons and the royal will, and I, the said governor and captain-general, not being informed of the settlement which the said natives of San Lazaro, in the said pueblo of San Juan, had granted and designated to their governor, Don Cristoval Yope, the place of Yunque, in order that they might go there in the coming winter, giving them permission and consent to plant the said lands this year, he having a place to go to thereafter with his said people, which number sixteen families, their whole number being one hundred and fifty-five persons, according to what I am informed and as appears by the list of the same made by the reverend father preacher, Brother Antonio Obregon, their father minister, doctrinal teacher, and guardian; I hereby direct my said lieutenant-general and their said alcalde mayor and interpreter, Matias Lujan, to say and intimate to the said natives and their said governor, Don Cristoval Yope, that they must go to their said land which they have in the said pueblo of San Juan, which they had in the same, as well as the lands which were given and partitioned among them by the natives of the same; and I direct my said lieutenant-general, if it should be

72 necessary, to go to the said pueblo of San Juan with the said governor, Don Cristoval Yope, and the war captains of the two pueblos being together in the plaza to inform them of my said order by virtue of the said royal will, which is but just and proper with regard to the said Spaniards, and it being neither unjust nor tyrannical to order them to leave the said lands and town founded by them on their said tract when they have and are provided with a safe dwelling on the portion of land which belongs to them as their own in the pueblo of San Juan, and as they also have their lands sufficient, irrigable, and dependent upon the seasons which are well known, and it is not right that injustice and injury should be done to the said Spaniards by keeping them out of their said lands known to be theirs, which through the Divine will promise, on account of their fertility, abundant harvests,

wherewith to maintain themselves and secure their support, without running the risk of a failure and the loss of their supplies by working new lands; and these (the Spaniards) even at great cost are not yet secure among the said natives, but are discouraged and intimidated, and have not the measure and the amount of their legitimate value (of the lands), and besides, the risk of a new loss to the royal Crown, and also the labor of working for a year lands wild and unknown, for all of which I, the said governor and captain-general, ought to consider and regard such proper reasons as the near arrival of the above-mentioned lot and branch of the said people and settlers in the said planting season, so as not to have them to break lands, nor much less to be troubled with regard to their dwelling houses, they having them secured on the said lands and tracts, as well as their acequias open and prepared, wherefore it is not in my power to give permission to the said natives of San Lazaro to plant and cultivate the same for this year, but they, as well as those of the said pueblo, must vacate them, and go to their said piece of land and dwelling houses in the said pueblo of San Juan and on their said lands and there plant their crops, and he will give them time to move without injuring or tearing down the said houses of the said town until the moon of the coming month, and he will call upon them to consider their having enjoyed for so many years the planting of the said lands as a reason for there being nothing due them on account of their leaving the said town. And with regard to the pueblo of San Cristoval, my said lieutenant-general, together with the said alcalde mayor and interpreter, Matias Lujan, will proceed to the same, and will tell the said governor and captains to go to the said place of Chimayo, where they asked my permission to settle, and I will keep my word to them in all things, and if

73 it be ascertained that the said land which they designated and asked for can be planted at once, and he will remind them that I gave the said permission and promise in regard to the said possession with the understanding that the lands should not be such as to require much time to prepare them for planting, and it having been learned that this could readily be done I made them the said grant under the condition that they should at once take possession and establish their settlement and plant their crops at the said place; and he will give them also, as a term for leaving and moving from their said town until the moon of the coming month, since they have had time sufficient for the same, and the said Spanish settlers, who have made representation and to whom I have made a grant because of their having alleged that the said tract and lands were theirs in the said place of Chimayo, shall go with my said lieutenant-general, in order that in the presence of the said governor and the natives of the said pueblo of San Cristoval they shall identify the tract which they have asked for and the lands which I have granted to them, which are from the said pueblo forward and none towards that which they leave and the road which leads to the said pueblo of San Cristoval, since with this specification I made them the said grant; and I inform, direct, and order the said Spaniards, through my lieutenant-general, not to have any conflict with the said natives, as my word and the importance of the said compact are superior to the grant which I have made to them, since it is uncertain, because of having been made on lands designated for the said natives and governor of the said pueblo of San

Cristoval, and therefore I will make it up to them in another part and place of equal value; and to the said natives he will make known the said order and will direct that they obey, carry out, and execute the same within the said term in accordance with the reasons justifying the same set forth, and those of them who may have any complaint may appear before me, the said governor and captain-general, in this city to make the same, and to say to them that I will hear them verbally or in writing, they presenting them through their alcalde mayor and interpreter, Matias Lujan, and in order that this said order to my said lieutenant may appear, and for the execution of the same I so provided and signed the same with my civil and military secretary, and it is dated in this city of Santa Fe on the eighteenth day of the month of March, of this present year of one thousand six hundred and ninety-five, to whom, on my order, it was delivered in the original in order that it be returned with the report of its execution.

DON DIEGO DE VARGAS ZAPATE LUJAN PONZE DE LEON, [Rubric.]

ALPHONSSO RAEI DE AGUILAR. [Rubric.]

Civil and Military Secretary.

74

Departure from this city of Santa Fe.

In this city of Santa Fe, on the twentieth day of the month of March, in the year one thousand six hundred and ninety-five, I, Colonel Luis Granillo, lieutenant and captain-general of this kingdom of New Mexico, in fulfilment of and in obedience to the above order and direction of the governor and captain-general of this kingdom, who is Don Diego de Vargas Zapata Lujan Ponze de Leon, left this city in company with the Sergeant Juan Ruiz de Cazeres, and at the distance of two long leagues from the same before arriving at the pueblo of Tesuque, of the Teguas, I came to the farm, which is in ruins, which belonged to Colonel Francisco Gomez, in which there is sufficient agricultural land for one settler only, and pasturage and woodland for the stock of one owner only; and I proceeded from the said pueblo of Tesuque directly to San Lazaro, which is the pueblo named in the said order, and in order to duly execute the same I caused to be assembled its governor, and Cacique Don Cristoval Yope, and the elders and principal men, and the majority of the natives of the said town of the Thana tribe, and in the presence of their alcalde mayor, who is an interpreter, and Sergeant Juan Ruiz, who is also an interpreter and who acted as such, I read to them the said order that they might understand it in their Thana tongue word for word, as was done, and they all answered that they would obey in accordance with what they had asked for and the grant which had been made to them in order that they might settle anew on the place at the end of the canada, called Chimayo, adjoining the mountain range, and in order to identify the same and to carry out the said direction contained in the said order I instructed them to proceed to the inspection of the same in my company to-morrow and also to advise as parties interested and adjoining, the governor of San Cristoval, the principal men and the natives of the same and in order that it may so appear I made it a part of the proceedings, and I signed the same, dated ut supra.

LUIS GRANILLO. [Rubric.]

75 The said lieutenant-general proceeds with the said governors of the pueblos to the examination of the tract designated at Chimayo, which was granted to them by the governor and captain-general of this kingdom for their settlement.

On the twenty-first day of the present month of March, of the date and year, I, the said lieutenant-governor and captain-general, left the said pueblo of San Lazaro with the said alcalde mayor and sergeant, and also its governor and leading Indians, and the majority of the natives, and also those of the pueblo of San Cristoval with their governor, their doctrinal minister, who is Fray Antonio Obregon, also going with them and me, the said lieutenant-general, and at the distance of two long leagues having gone through the canada and passed an arroyo or small rivulet (arroyo Riachuelo Pequeno) which comes down from the said mountain range and which lines with the farm of Captain Juan Luis, up the river, and having gone along a little further, about half a league, where there is a ruin on the left, the said Indians, governors, and Caciques showed me the plain which is adjacent to the said ruin which is in a canada wide and large enough for their pueblo with sufficient land for irrigation from the arroyos and rivulets which come down from the said mountain range, and I examined the mouth of the ditch and the dam, which the said Indians showed me, and the said rivulet has water sufficient and permanent; and returning to the plain the said Indians again proceeded to mark off and describe the said place for which they had asked the said governor and captain-general, and which grant he had made and conceded to them, and they marked off the plan for the said town, saying that it was to be of sixty-eight houses, in order that the people of the said two pueblos might occupy the same, and adding to them the Thanos Indians and captive women who had escaped from the city of Santa Fe in case they should desire to come with them, that they would admit and receive them; thus the said lands were given and set off to them, they being satisfied with having examined and seen the tract and place for the establishment and site of their pueblo, and in order that it might so appear I made it a part of the proceedings and I signed it, dated ut supra.

LUIS GRANILLO. [Rubric.]

76 The said lieutenant-general departs from the canada for the pueblo of San Juan and proceeds to the other side of the Rio del Norte to sleep at Santa Clara.

And immediately thereafter, on the said day, month, and year, I, the said lieutenant-general, took the route and way in order to carry out the tenor of the order and direction aforesaid, proceeding to the examination of the farms and ranches belonging to the Spanish settlers in the canada before the general revolution of this kingdom, which were said to be occupied, and at the distance of half a league, and on the boundary of said farm of Captain Juan Luis, which he has at the said place of the said grant to the said Indians, I found and examined the farm which belonged to the Martinez, the ruins of which consist of the standing walls, and in them were living encamped five persons, with their families, because there were lands and pastures sufficient on the north; and

having proceeded in the said direction about three-quarters of a league I found, on the left of the route, the said pueblo of San Lazaro, and crossing the Rio del Norte to the right side I found and saw the farm which belonged to Miguel Lujan, on which the house is still standing, he occupied with his own family only, as there is irrigable land sufficient for one family only, and pastures sufficient for such stock as it might possess; and with this farm there lines another house and cultivable lands which were planted by Marcos de Herrera, who had his family on another farm lower down, which said place has about as much land as the last named and mentioned; and following this there is another lot of cultivable land which belonged to Nicolas de la Cruz, the house on which is standing and occupied by his widow, the land being sufficient for the support of her family only, and the pastures are in the same proportion; and following this is the land which belonged to Melchor de Archuleta, the ruin of the house only remaining, and there are about sufficient lands for one family, with pastures to correspond; and following along the said plain and meadow there is another farm, which belonged to Juan Griego, and this is a better piece of land than any of the others, because of its extent, it being sufficient for two families, dividing the agricultural land between them and giving them the pastures in common; and next there follows another farm, which belonged to Sebastian Gonzales, and now held by Captain Alonso del Rio, and in this two others had shares, so that there is room for three families to settle on the said tract, and the lands are of superior quality; and next is the farm

77 which belonged to Francisco Xavier, the house in ruins and a little tower standing, and although he lived on it alone, the tract has abundant land for two families; and this is followed by that of Pedro de la Cruz, of whose house there is but one room standing, and it has land sufficient for one family only; and having finished making the inspection of the said farms I, the said lieutenant-general, proceeded to the other part of the arroyo, which lies between them and descends the said canada, the Rio del Norte being on the right, and I examined the following farms: First, there is adjoining the said arroyo the farm which belonged to Bartolome Montoya, on which there is only the ruin of the house in which he lived, and there are lands sufficient for one family only; and there adjoins this another farm, which belonged to Diego Lopez, and there is a tower left standing which adjoined his house, there being land enough for one family; following this is another farm, which belonged to Marcos de Herrera, and the said farm has land sufficient for one family, the house, because of its being close to the said arroyo, or rivulet, was carried away by a heavy freshet; next follows another tract of land, which was held and owned by the community of the pueblo of Santa Clara; following is the farm which belonged to Colonel Francisco Gomez, the lines of the foundation of his house only are visible, and there is room for one family only; next follows the farm which belonged to Ambrosio Saez, in the houses of which there are now living, as they were during the past year of one thousand six hundred and ninety-four, part of the Teguas Indians, rebels from the pueblo of Tesuque, making use of the said lands, for which reason the houses are in good condition, and on this farm two other families can be settled; and there is also in the middle of the said meadow the farm on which

Augustin Romero was settled during the planting season because he had his cultivable land on the said tract, and here one family can live very well; and so descending along the Rio del Norte and the Mesa de San Ildefonso, the ruins of the said house are seen, and the land is sufficient only for one family; and the said farms are those which are found as aforesaid, from the said mouth of the canada as named, with the owners who lived in them and were settled on them; and I, the said lieutenant-general, then returned with Sergeant Juan Ruiz, who accompanied me on the said inspection, and he knows the said places because of always having lived near them and of having been raised there; and the said report is true and certain, and in order that it may so appear, I made it a part of the proceedings, and I signed it, and I proceeded to the pueblo of Santa Clara, in order to sleep there; dated ut supra.

LUIS GRANILLO. [Rubric.]

- 78 Arrival of the said lieutenant-general at the city of Santa Fe, at which place he returns the order of the said governor and captain-general with the proceedings had in obedience thereto.

On the twenty-third day of the present month of the date and year, I, the said lieutenant-general, having arrived at the city of Santa Fe, made report of the foregoing proceedings to the governor and captain-general of this kingdom, Senor Don Diego de Vargas Zapata Lujan Ponze de Leon, and by direction and order of his excellency I left and delivered the original into his hands, and in order that it may so appear I signed the same with the said governor and captain-general in the presence of his civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]
LUIS GRANILLO. [Rubric.]

Before me :

ALPHONSSO RAEI DE AGUILAR, [Rubric.]
Civil and Military Secretary.

- 79 Petition of the Thanos tribe of the pueblos of San Lazaro and San Cristoval.

To the GOVERNOR AND CAPTAIN-GENERAL :

The governors of the pueblos of San Lazaro and San Cristoval of the Thanos tribe for themselves and in the name of the people of the said pueblos: We appear before your excellency asking that all the privileges allowed by law be given us, and we say: That your excellency was pleased to order us to move from the said pueblos in order to settle them with Spaniards, and we pray that your excellency will give us time to plant the said lands, which are now open, during the present year, using the acequias of the same, and as soon as we take off the crops we will vacate the said pueblos in order that your excellency may settle them as your excellency pleases. Which said petition your excellency was pleased to grant, and with the same we were gratified. And now we have learned that it is the intention of your excellency to send us to settle and plant in another place, in view of which we submit to the consideration of your excellency the hardships which we are now undergoing,

as we have (as is well known) no maize, which is our only food, and now we are not only unable to procure any, but in order to support ourselves up to the present we have sacrificed our clothing, having had to sell it at low prices, and also in order to have seed for this year, and no matter where we may go to settle and plant it will be necessary for the people of both pueblos to occupy all their time in breaking the land and constructing acequias, a thing impossible to do in this year, because we have nothing to live on, and we will have to seek it elsewhere, with which the present evil is not remedied, nor that of the future, which is imminent. In view of all that which we have set forth, placing ourselves at the feet of your excellency, with all due respect, we ask and pray that your excellency will consider our need and the remedy for the same, which rests wholly on your excellency's word, and that your excellency will be pleased to permit that for this year we may plant in these pueblos, and on our part we are ready to vacate them so soon as we gather the crops, in which we hope to receive from the powerful hand of your excellency all favor and grace as we have already experienced in things of greater import, and which is just, and for the same, etc.

THE THANOS GOVERNORS OF SAN LAZARO AND SAN CRISTOVAL.

80 Presentation of the foregoing petition by the war captains for themselves and in the name of the Thanos tribe of the pueblos of San Lazaro and San Cristoval.

In this city of Santa Fe, on the twentieth day of the month of March, of the year one thousand six hundred and ninety-five, before me, Don Diego de Vargas Zapata Lujan Ponce de Leon, governor and captain-general of this kingdom and provinces of New Mexico, its new restorer and conqueror at his own expense, and reconqueror and settler and castellan of its forces and garrisons by His Majesty, &c.

DECREE.

It was presented by the war captains of the natives of the Thanos tribe of the said pueblos of San Lazaro and San Cristoval; and, whereas I have given the order to my lieutenant-general, I direct that it be carried out and executed, since I can only permit that the Indians of the first pueblo, that of San Lazaro, if they do not desire to join and incorporate themselves with those of the pueblo of San Juan de los Caballeros, where they came from and where they left their portion of land, or to return to their old pueblo which they left and which they had and did have before the general revolution of this kingdom in the year 'eighty, and in which they lived for many years afterwards, they shall join and agree to live together in the said second pueblo of San Cristoval, and shall plant their crops on their lands, going as far as the said canada of Chimayo and farm of Moraga, where, during the past year because of the second uprising, they made and had their cornfields; and they having lands of their own, there is no reason why the royal will of His Majesty the King, our master, should not be carried out in regard to Spaniards who are expected and who are now on their way here to augment the population and secure thereby the restoration and reconquest of

this said kingdom, nor that the provision made for the same out of his royal treasury should be lost by their not being given lands suitable and proper for their making their crops and thereby their support—reasons for not being able to leave exposed to said *said* contingency an enterprise of such magnitude; and besides, in view of the objection of the said natives that the said lands are not in condition to be cultivated, they ought to consider the favor done in giving them the half of the lands belonging to the other said pueblo of San Cristoval, and acknowledge the care and attention given to their relief; and in order that this said decree may appear of record let it be placed, with the petition of the said natives, with the decrees and proceedings, which by virtue of the said order my said lieutenant-governor and captain-general shall carry out and make report of the same in order that proper action may be taken, and I signed it in this said city with my civil and military secretary on the said day ut supra.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

Before me :

ALPHONSSO RAE DE AGUILAR, [Rubric.]
Civil and Military Secretary.

82 Proclamation including therein the grant made to the Mexican-Spanish families and given with the title of Villa Nueva de Santa Cruz de Espanoles Mexicanos del Rey Nuestro Senor Don Carlos Segundo, as set forth, and the conditions and causes expressed for the carrying out of the same.

Don Diego de Vargas Zapata Lujan Ponze de Leon, governor and captain-general of this kingdom and provinces of New Mexico, its new restorer, conqueror at his own expense, reconqueror and settler of the same, castellan of its forces and garrisons, by His Majesty, &c.

The Thanos Indians, of the pueblo of San Lazaro, having by virtue of my order and direction, as expressed in the same and forwarded for its due execution on the twentieth of March last of this present year to my lieutenant-governor and captain-general, Colonel Luis Granillo, as it appears in the proceedings which by virtue of the said order were had, and the said Indians having consulted with their governors and asked me for the grant of the tract of the canada de Chimayo and left to me the said pueblos of San Lazaro and San Cristoval, and I having succeeded in having that of San Lazaro vacated in order to employ and occupy it with the families which his excellency the viceroy, the Conde de Calve, has sent for the settlement of this said kingdom of New Mexico, and they having arrived on the twenty-third of June of the past year one thousand six hundred and ninety-four, their number being in accordance with their list and muster roll, in order that they might be supported and lodged until the said kingdom was safe, and they came into this said city to the number of sixty-six and one-half families, and in order that they may be together without the intrusion of any others, in view of their union, and in order that they may be contented, they having come from one place and country to this said city, I placed them in the first grade, and I designate the said pueblo, its dwelling houses, its cleared agricultural lands, drains, irrigation ditches, and dam or dams,

which the said native Indians had and did have for irrigation and the security of raising their crops, and I also designate and grant, in the name of His Majesty, the dams which they may leave open and those which they may open, and the woods, pastures, and valleys which the said natives had and enjoyed, without prejudice to the farms and ranches which lie within its limits and district, and all that which it covers and may contain as far as the pueblos of Nambe, Pojoaque, Jacona, San Ildefonso, Santa Clara, and San Juan de los Caballeros, giving these as the boundaries of the tract which the said settlement, shall enjoy, hold, and have, and which I make a seat and town, and also possession of the houses which may be given or assigned to them in person; and furthermore, the honorary title of "Villa Nueva de Santa Cruz de

83 Espanoles Mexicanos del Rey Nuestro Senor Carlos Segundo," which, in the name of His Majesty, I give to the said settlement, and I constitute and grade it as the first new settlement, and as such it shall enjoy priority of settlement, with the understanding that that of this city of Santa Fe is the first, and in it only shall be held the election of the members of the illustrious council, but each shall have its civil authority, which shall be composed of an alcalde mayor and war captain and lieutenant, with the title of captain of militia, alferrez, and sergeant, the said settlement being limited to four squad corporals and alguazil de guerra, who shall go out on scouting expeditions with the said captain of militia and the other officers, alternating every month, and they shall have this style and form of government for their protection, and they shall be under civil and military government because of being on the frontier, and in order that the said Spanish Mexicans may be informed of the grant of the said villa nueva made to them, I direct that the same shall be published in the said form, in order that they may acknowledge in due form that I, the said governor and captain-general, have received them in this said kingdom and that I have favored them in proportion to my respectful appreciation of the promise contained in the proclamation ordered to be published by his excellency the said viceroy, the Conde de Calve, as in it he promised them and directed that I should be ordered to give them lands on which to settle, and I give them all with appreciable improvements, since I have given them cleared and broken lands and of known fertility, with their drains and irrigating ditches and dams in good condition and with the irrigation secured, and also new houses, because the said pueblo is new, and they have nothing to do but to go and live in them and to make use of the lands which I will designate for them, granting ranches and farms to those who may prefer the same, in order to allow them more room and allow for others settlers who may come in, and which the King our master may be pleased to send, and also those which I, the said governor and captain-general, may deem it proper to send to settle there, and this will also be done with people who may voluntarily ask for a grant, and who may be designated as settlers of the said town, in order that they may enjoy the privileges and rights of the same; and in order that it may so appear and that they may be ready to leave this city of Santa Fe I appoint Thursday, at ten o'clock in the morning, and I will then have in the plaza of this city the packmules which I now have, and I will also furnish some horses to mount, in part, those who may need them, and I will aid them in all

things, assuring them that a ration of beef and corn shall not be wanting, as well as half a fanega of corn to each family for planting
 84 which I promise to give them, and also implements, such as picks, shovels, hoes, and axes, until those ordered by his excellency the viceroy from the contractors shall arrive, and there shall also be forwarded to their alcalde mayor and war captain, who may be appointed, a supply of firearms, powder, and ball, in order that they may be provided with all that is necessary; and in order that this said proclamation and that which is set forth in it may serve them as a foundation and sufficient title, I order that it be published in military style, with music by the band, and in the presence of the leaders and officers and my lieutenant-governor and captain-general, and also that part of the illustrious council which is in this city, and its notary, and of my civil and military secretary, and that it be published in the inner and the outer plazas; and I signed it in this said city of Santa Fe on the nineteenth day of the month of April, one thousand six hundred and ninety-five.

DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

By order of the governor and captain-general:

ALPHONSSO RAE DE AGUILAR, [Rubric.]

Civil and Military Secretary.

In this city of Santa Fe, on the nineteenth day of the month of April of the year one thousand six hundred and ninety-five, I, Captain Alphonsso Rael de Aguilar, civil and military secretary, certify that on this day this said proclamation was published in the two public plazas of this city in the presence of a large concourse of people in the same and in a loud and intelligible voice by Sebastian Rodriguez, negro drummer, and in order that it may so appear I signed it.

APLONSSO RAE DE AGUILAR, [Rubric.]

Civil and Military Secretary.

85 The Mexican settlers destined *destined* for the villa nueva de Santa Cruz depart from Santa Fe.

On the twenty-first day of the present month of April of the said year of one thousand six hundred and ninety-five, at the hour designated in the proclamation granting the title of villa nueva de Santa Cruz de los Espanoles Mexicanos del Rey Nuestro Senor Don Carlos Segundo, the sixty families now in this city of Santa Fe departed at nine o'clock in the morning to settle, as provided in the said proclamation, and, in order that it may so appear, I signed it with my civil and military secretary.

DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

Before me:

ALPHONSSO RAE DE AGUILAR,

Civil and Military Secretary.

[Rubric.]

86

Arrival at the villa nueva de Santa Cruz.

On the twenty-second day of the month of April of said date and year I, the said governor and captain-general, Don Diego de Vargas Zapata Lujan Ponze de Leon, of this Kingdom and Provinces of New Mexico,

by His Majesty, arrived at this villa de Santa Cruz de los Mexicanos Espanoles del Rey Nuestro Senor Don Carlos Segundo, so named and placed by me the said governor and captain-general, its site and settlement having been vacated by my order by the Thanos tribe, formerly of the pueblo of San Lazaro, and having given it the title and placed it under the protection of the Holy Cross, and they having already arrived with their alcalde mayor and war captain appointed, and the other officers named in the said proclamation, and with the title of villa published in the same, and ordered to be published on the nineteenth day of the present month and year, and they being drawn up in line with their said captain and other officers designated and appointed, and they were at the entrance of the plaza of the said villa, and dismounting there near the chapel which served as a church for the natives of the said pueblo, and having ordered the settlers to form in a half circle at my side, the royal alferéz being in front with the royal standard with my lieutenant-governor and my civil and military secretary, I directed the said alcalde mayor and war captain, Major Antonio Jorge, his lieutenant and captain of militia, Sergeant Nicolas Ortiz, and his ensign, Joseph Valdez, and Sergeant Manuel Ballejo and Antonio Godinez, Alguacil de Guerra and the four squad corporals, Joseph del Balle, Sebastian de Salas, Miguel Fajardo, and

Bustos, to step forward from the said line, all of whom were appointed as the government politic and military, the said villa being on the frontier, by me the said governor and captain-general.

Possession given of the said villa and oath made.

And I required and directed that they should make the usual oath accepting the said place and settlement, the nueva villa of their own nation of the Mexicanos Espanoles del Rey Nuestro Senor Don Carlos Segundo, and as loyal vassals to maintain and preserve it, even at the expense of their lives, to which they responded under said oath that they accepted the same and that they would obey and keep the same; and I again made them the grant under the said acceptance and oath, revalidating to them their lands which belong to them and the boundaries set forth, and which limit the pueblos mentioned in the said proclamation of grant, and also the farms and ranches included within their district and jurisdiction without prejudice to the boundaries of the lands which belong to each one; and also, in order to encourage them, I made them a grant
 87 of all the minerals which might be found in the Chimeyo mountain range according as they might discover them and that I would carry out and observe the royal ordinances of His Majesty, and that they be of good heart and keep up their courage and that on my part I would assist them; and there being present the reverend father, Fray Francisco de Vargas, ecclesiastical judge in capite of this said kingdom and its custodio in this said custodia and concourse, and having in his company the reverend father preacher missionary, Fray Antonio Moreno, whom he had chosen as guardian and minister, I, the said governor and captain-general, said to the said settlers that he being the chaplain of His Majesty appointed and named him as their guardian and as such I gave him possession of the said chapel in order that until they rebuilt their church it might serve them as such, and thus I gave possession of the same to the said

reverend father, leading him into the same by the hand, and he arranged the altar, going in and out; and for the greater formality and force of the said possession and oath made in regard to the said villa, I left my said place with my said royal alférez and my lieutenant, directing my royal alférez to place himself in the centre of the plaza, together with my civil and military secretary, in order that he might proclaim that he defended and sustained the possession given by favor of His Majesty at the said granted place and tract with the limits and boundaries given and granted by me the said governor and captain-general, in the said royal name, to the said settlers with the honorary title of villa nueva de los Espanoles Mexicanos del Rey Nuestro Senor Don Carlos Segundo; that he came out to defend it as he would defend it with his life, and thus with his drawn sword in his hand he would sustain and did sustain it against all who might oppose it; and I, the said governor and captain-general, with all present, cried out all together, as loyal vassals of His Majesty, saying, "Long live the King our lord, whom may God preserve, the Senor Don Carlos II, King of the Spaniards and of all this New World and this new town of the Mexicans and Spaniards, and which in his royal name was founded with the title of villa nueva de los Mexicanos y Espanoles, and increased, founded, and settled in the interest of his Royal Crown, may he live for many years and reign over greater domains and monarchies;" and having repeated the said acclamation three times, throwing up our hats, three volleys were fired at the same time, in congratulation upon the installation of the said settlers with such honor and demonstrations of appreciation and jubilee; and they asked me as a favor that I would give them a certified copy and that I would order that they be given the same of the said possession as well as of the proclamation and the quality of the title specified in the same in order that they might hold the same as such

88 for the said villa; and in order that it may so appear, they signed it with me the aforesaid, together with my lieutenant-governor and captain-general and my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON.

LUIS GRANILLO.

SERGEANT MANL. BALLEJO.

ANTONIO BALVERDE DE COSSIO.

The Alférez Real: ANTONIO JORGE.

[Rubric.]
[Rubric.]
[Rubric.]
[Rubric.]
[Rubric.]

Before me:

ALPHONSSO RAEI DE AGUILAR,

Civil and Military Secretary.

[Rubric.]

89 The governor and captain-general leaves orders with the said lieutenant-general to partition the separate tracts belonging to the said settlement.

In this city of Santa Fe, on the twenty-third day of the month of April of the year one thousand six hundred and ninety-five, I, the said governor and captain-general, my personal presence being necessary in the city of Santa Fe, and I having to go to the pueblos of San Cristoval and Nambe, I order and I leave orders with my lieutenant-governor and captain-general that the separate lands of the district and limits of the said villa nueva de Santa Cruz, the settlers having been assembled and

it having been ascertained which of them have received and have been favored with grants of the tracts and ranches already surveyed, to those to whom such grants have not been made the said separate lands shall be given, marking off for each settler and his family that which may be found to be sufficient for the planting of one-half a fanega of maize, and in it he may plant such other seed as he may have, and the said partition shall be made in such manner as to satisfy the said settlers, and of the lands that may be left over an account shall be made to me, and in order that the said order may appear in this said decree I made it a part of the proceedings, and I signed it, with my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

Before me:

ALPHONSSO RAEI DE AGUILAR, [Rubric.]
Civil and Military Secretary.

- 90 Arrival of the said governor and captain-general at the pueblo of San Cristoval, and he again requires the native Thanos of the same to plant their crops and to carry their harvest to the new pueblo which they shall build on the said tract of Chimayo, in order that he may settle the said pueblo with Spaniards in the month of October.

And immediately thereafter, on the said day, month, and year of the date, I, the said governor and captain-general, having repeated to the said Spanish Mexicans of the said Villa Nueva de Santa Cruz the said order, I bade them good-bye and proceeded to the said pueblo of San Cristoval, in the plaza of which place all its people were assembled, together with those who had been settled at the said villa nueva, and I confirmed the grant which I had made to them in giving permission to pass this summer on the same and to plant their crops on its lands, and required of them that the crops which God our Lord might be pleased to permit them to gather they should at once carry to the new pueblo, which during this summer they would have to rebuild, since in the month of October they would have to occupy it, leaving that of San Cristoval vacant in order that I might settle it with Spaniards, as I had already informed them, and they replied that they would so do; and I having again confirmed the grant made in their favor of the said tract of Chimayo, I bade them good-bye, leaving them happy; and in order that it may appear of record I made it a part of the proceedings, and I signed it, with my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

Before me:

ALPHONSSO RAEI DE AGUILAR, [Rubric.]
Civil and Military Secretary.

- 91 The said governor and captain-general proceeds to the pueblo of Nambe, and in it gives possession to the minister missionary, who remains there as doctrinarian.

On the said day, the twenty-third of April, of the said year, I, the said governor and captain-general, the very reverend father custodian,

Fray Francisco de Vargas, having appointed a minister doctrinarian to the mission of the Teguas of the pueblo of Nambe, proceeded with him to give him the possession, and, having entered the said pueblo, its people were assembled to receive me with all politeness, and they being in front of the principal site where they had the chapel and the house adjoining the same for the said minister, I dismounted, and, through the interpreter, I told them that I had come to install the father who was to aid them and administer the holy sacraments, he being the reverend father preacher, Antonio de Azevedo, and in the said form I gave him possession of the said chapel and house, and in testimony of the same I directed that the doxology, &c., be prayed and sung three times, and I ordered the said Indians to aid him in all things and to fulfil their obligations as Christians and to fail in nothing; and in order that the said possession and the reply of the said natives that they would comply with and obey all that I had ordered might appear of record, I signed it, with my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

Before me:

ALPHONSSO RAE DE AGUILAR, [Rubric.]
Civil and Military Secretary.

- 92 Arrival of the families which by order of his excellency the Conde de Galve were procured and obtained by Captain Juan Paez Hurtado, chief commissioner, appointed by me, the said governor and captain-general.

In this city of Santa Fe, the capital of this kingdom and provinces of New Mexico, on the ninth day of the month of May of the present year of one thousand six hundred and ninety-five, there arrived at this city of Santa Fe, capital which it is of this kingdom and provinces of New Mexico, the families which by order of his excellency the viceroy, the Conde de Galve, with the approval of the general committee of the ministers of the royal treasury and war, in March of the past year of one thousand six hundred and ninety-four, ordered me, the said governor and captain-general of this kingdom, to send a chief commissioner possessing my confidence, to be appointed by me, and Captain Juan Paez Hurtado possessing the same, I gave him the commission and appointment in order that he might carry out the said orders of his excellency the said viceroy, and he proceeded to the kingdom of Galicia and the Real de Zacatecas and other places, and the families which he procured were forty-four, according to the list made of the same and which I, the said governor and captain-general, received in person, and in the presence of the said captain chief commissioner I gave them lodgings in the said city in the houses which the settlers now at the villa nueva de Santa Cruz had occupied, and in or' that the said arrival may appear of record I signed it, with the said captain chief commissioner and my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON .[Rubric.]

Before me:

ALPHONSSO RAE DE AGUILAR, [Rubric.]
Civil and Military Secretary.

Act of transmittal.

In this said city of Santa Fe, on the said day of the date May nine and year one thousand six hundred and ninety-five, I, the said governor and captain-general, Don Diego de Vargas Zapata Lujan Ponze de Leon, having examined these proceedings, in order that his excellency the viceroy, Cond' de Galve, which he is of all this kingdom of New Spain, may be informed of what has been done in this said kingdom in the royal service, in which I, the said governor and captain-general, have devoted the care and attention necessary for his satisfaction, and in order to make transmittal of the same I directed my civil and military secretary to make a literal copy of the said proceedings, as well as of the letter of transmittal with this said decree, in order that being, copied and compared in due form the same transmitted and forwarded to his excellency the said viceroy, and more particularly because the courier despatched on the fourteenth of January of the present year has not returned and the cause of his delay is not known. And I signed it in this said city of Santa Fe on the said day, month, and year, with my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

Before me:

ALPHONSSO RUEL DE AGUILAR, [Rubric.]
Civil and Military Secretary.

94 MOST EXCELLENT SIR.

SIR: Captain Juan Paez Hurtado, chief commissioner appointed by me to bring the families which by order of your excellency he procured and obtained in the city of Zacatecas, having arrived at this city of Santa Fe and having entered the plaza of the same to the number of forty-four families, which I received and inspected personally, I going to the said plaza for the purpose, and also to lodge them in the houses which were vacated by the sixty Mexican families which your excellency also sent for the settlement of this kingdom, and having succeeded in all that which I might and could desire for the royal service of His Majesty in the villa nueva, de Santa Cruz de los Vecinos Mexicanos del Rey Nuestro Senor Don Carlos Segundo in a pueblo which the rebels of the Thanos tribe had newly founded on lands which had belonged to Spaniards, and by the means which I devised for the accomplishment of this difficult enterprise I succeeded, as will be shown by the orders and proceedings had, of which I forward a certified copy to your excellency, and this, upon examination and consideration, will prove to your excellency that I have been successful, and that I have secured at a short distance another larger town of the said tribe which is vacant and free, and I have secured it for the month of October, when, God willing, I will found and settle another town with these said families which we have received and lodged to-day in this city of Santa Fe, and I will see that both shall plant crops in order that they may be relieved from receiving rations as at present and living on the generosity and magnificence of your excellency, and it is very true that the transportation of maize to this city has caused me much trouble because of the distance of the kingdom of New Biscay and of there being no resources any nearer.

I am anxious and troubled because the courier whom I despatched on the fourteenth of January of the present year to your excellency has not returned, and this also induces me to send this despatch, in order that I may ascertain the reason of his delay or know whether he has been robbed or murdered; and I beg that your excellency will send me duplicates of the orders and despatches which your excellency may have been pleased to forward to me by the said courier in order that I may on my part duly execute the same; and I also hope that your excellency has received the reply of His Majesty the King our master, whom may God preserve, in order that with the same your excellency may decide upon the reply to my letters of consultation forwarded by your excellency to the

95 supreme and royal council of the Indies, as in this expectation I have delayed the said settlers in order that through its means they may be assured of their establishment; and two missions have also been established, Nambe and the said villa nueva, the doctrinal father serving the united pueblo of the said Thanos.

While I was absent from this city there arrived a band of Apaches from the east, who are called Chiyenes, and they told in the town at which they arrived, which is of the Picuries tribe, how some men, white and light-haired, had destroyed a very large tribe of the Apaches Conejeros, living much further inland than their own. The Chiyenes then returned whence they came. This was told to me by the alcalde mayor and the father minister, who came to see me, and I having asked the alcalde mayor why he had not detained them, he replied that the leader of the band had said that he would return with all his people in September, and if God will permit me to live until his return I will hear what he has to say and judge of it accordingly, and I did not wish to omit to give your excellency this information, together with the above, as I desire to serve your excellency in all things; and may God preserve your excellency for many happy years. Done in Santa Fe, on the ninth day of the month of May, one thousand six hundred and ninety-five.

Most excellent sir, &c.,

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

96 *Portion of archive 1342.*

1714. (Sello.) Un quartillo. No. 366. Sello quarto, un quartillo, anos de mil setecientos y onze, y doze, y treze, y setecientos, y catorze. Un quartillo. (Sello.)

Dn. Ferdo. de Alencaster Norona y Silva, Duque de Linares, Marqs. de Valdefuentes, Conde de Gonca y Porto Alegre, comendador mr. del Order de Santio. en el Rno. de Portugal, Gentil hombre. de la Camara de S. M. de su Conssso. Virey, Govr. y Capn. Gral. de esta Na. Espa. y Presidre. de la Rl. Auga. della, &c.

Por quanto Su Magd. (que Dios ge.) se sirvio expedir la real cedula del tenor siguiente—el rey. Por quanto estando dispuesto pr. ordenanzas y leyes de Yndias y con expecialidad por la octava libro terzero de la recopilacion de ellas que a las nuevas reducciones y pueblos que se formaren de Yndios, se les de sitio que tenga comodidad de aguas, tierras, montes, salidas y entradas para que hagan sus labranzas y un egido de

una legua donde pasten sus ganados sin que puedan rebolverse con los de los Españoles se me ha ynformado se falta enteramente á esta dispozicion en todas las misiones de la Nueva España pues gobernadores y encomendadores no sole no les dan tierras a los Yndios pa. que formen sus pueblos sino que si las tienen se las quitan con biolencia dendiendoles sus hijos como esclavos y trayendo sus mugeres á sus cassas á que les sirban empleandolas en hilar, tejer y labrar sin pagarlas su travajo con que se aniquilan los pueblos que se han fundado á costa de grandes trabajos de los misioneros siendo motivo de que no puedan administrarlos ni enseñarlos la doctrina y consiquientemente formarles pueblos de los muchos que se hicieran en las nuevas conbersiones si los gobernadores y encomendadores atendieran al cumplimto. de la expresada ley y obligacion de sus empleos y no al de dus propios intereses, por tanto por la presente mando á mi

97 Virrey de la Nueva España audiencia y gobernadores de ella que en inteligencia del desagrado que me han causado estas notizias cuiden en lo adelante del remedio de este pernizioso abuso y castigo de los transgresores de las expresadas leyes y que en conformad. y observancia de ellas pongan todo su mayor desbelo y eficacia en que se de a los referidos Yndios rezien combertidos las tierras exidos y aguas que les estan conzedidas y que por ningun motivo se puedan baler de ellos ni de los hijos ni mugeres para el servizio personal sino que sea voluntario en ellos y pagandoles el jornal que fuere estilo por combenir asi al servicio de Dios y mio, teniendo entendido que de lo contrario pasare á tomar severa resoluzion y del recivo de esta despacho y haberlo hecho notorio para su cumplimiento en las partes que combenga, y de lo que resultaze de las providenzias que aplicaren me daran quenta en la primera ocasion que se ofrezca para hallarme enterado. Fha. en Madrid a quinze de Octubre de mil setezientos y treze. Yo el Rey. Por mandado del Rey Nro. Señor, Dn. Diego de Morales Velasco, señalada con quatro rubricas. Y habiendose obedezido por mi dha. rl. cedula en quatro del corre. Mande que para la exaccion y cumplimto. de lo dispuesto por Su Magd. se llevase al señor fiscal, que vista su respuesta con que me conformé. Por el presente mando al govrnr. y capn. gral. de la provinzia de la Nuova Mexico guarde, cumpla y excute prezisa y puntualmente el contenido de dha. real cedula procurando por todos medios que a los Yndios rezien combertidos se les den las tierras, exidos y aguas que por leyes reales les estan conzedidas sin permitir se balgan ninguna persona de dhos. hijos ni mugeres para el servizio personal sino que sea voluntario y pagandoles en este caso el jornal que fuese estilo celando y cuidando el cumplimiento de lo mandado por Su Magd. por convenir asi al servicio de Dios y del Rey devajo de la pena de quinientos pesos que se les sacaran irremisiblemente. Mexico veinte y dos de Octubre de mill setezientos y catroze años.

98 EL DUQUE DE LINARES. [Rubrica.]

Por mdo. de su exa.:

CARLOS ROMERO DE LA VEGA. [Rubrica.]

Assbo. dos fas.

Ve, en obedezimto. de real cedula Mda. al Govr. de la Na. Mexco. y de cumpla y excute la rl. cedula de S. M. que prebiene la observanzia de los Yndios rezien combertidos.

(Seal.) One quarter. Seal fourth, one quarter, for the years one thousand seven hundred and eleven and twelve and thirteen, and seven hundred and fourteen. One quarter. (Seal.)

Don Fernando de Alencaster Norona and Silva, Duke of Linares, Marquis of Valdefuentes, Count of Gonca and Porto Alegre, Knight Commander of the Order of Santiago in the Kingdom of Portugal, Gentleman of the Bedchamber and audience of His Majesty, Viceroy Governor and Captain-General of New Spain and President of the Royal Audience thereof.

Whereas His Majesty (whom may God preserve) has been pleased to issue the royal decree in the following terms—The King. Whereas, the ordinances and laws of the Indies, and especially the eighth, book third of the Recopilation of the same, provide that locations with sufficient water, land, timber, entrances, and exits for cultivation be given to the settlements and towns (pueblos) of Yndians which may be formed, and a common of one league, where they can pasture their cattle without their being mixed with those of the Spaniards; and whereas we have been informed that these ordinances are not complied with in any of their provisions in all the missions of New Spain, the governors and agents not only refusing neglecting to give lands to the Indians in order that
 100 they may form towns, pueblos, but even deprive those whom have of them by force, selling their children as slaves and taking their women to their houses as servants, employing them to spin, weave, and labor, without remunerating them for their labor, depopulating in this manner the pueblos that have been established at the cost of so much labor by the missionaries, who are prevented from administering to them and teaching them the doctrine, and consequently preventing the formation of pueblos by the many Indians recently converted, which would be the case were the governors and agents to comply with the aforesaid law and discharge the duties of their office, instead of attending to their private interests. Therefore by these presents we direct my viceroy of New Spain, the audience and governors of the same, that in view of the displeasure which this information has caused us that in future they provide a remedy for this pernicious abuse and punish the transgressors of the aforesaid laws, and that in the compliance and fulfillment of the same they use their best endeavors and zeal, in order that the lands, water, and pastures granted to them be given to the aforesaid recently converted Indians, and that in no case whatsoever are they, their children, or women to be used in service without their consent and the payment of the customary price for labor, such being agreeable to the service of God and of ourself, with the assurance that if not complied with we will proceed to use severe measures; and of the receipt of this decree and of the publication of such portions as may be necessary to be complied with and of the result of the measures adopted report will be made to us by
 101 the first opportunity, in order that I may be informed. Done at Madrid on the fifteenth day of October, one thousand seven hundred and thirteen. I the King. By order of the King, our Sovereign, Don Diego de Morales Velasco, countersigned with four rubrics. And said royal decree having been obeyed by me on the *on the* fourth instant

I directed that for the performance and fulfillment of the mandate of His Majesty it be taken to the attorney-general (fiscal), and having seen his answer, with which I am satisfied, I by these presents direct the governor and captain-general of the province of New Mexico to obey, perform, and execute, punctually and faithfully, the contents of said royal decree, and to use every means, in order that the newly converted Indians receive the lands, waters, and commons which are granted to them by the royal ordinances, without permitting any person to use their children or women for private service without their free consent, paying them in such event the customary price for their labor, being zealous and careful of the performance of the mandate of His Majesty, such being agreeable to the service of God and His Majesty, under the penalty of five hundred dollars to be irrecoverably forfeited. Mexico, October twenty-second, in the year one thousand seven hundred and fourteen.

(Signed)

THE DUKE OF LINARES. [Rubric.]

By order of His Excellency:

(Signed)

CARLOS ROMO DE LA VEGA. [Rubric.]

(Rubric.)

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Portion of Archive 1342.

Dn. Juan Bapta. de Anza, Coronel de Cavalleria de los Rs. Extos. de Su Magd., Governador y Comte de la Prova. del Nuevo Mex'co.

Por quanto con fha. de 24 de henero del ultimo año anterior de ha servido dirigirme el Sor. Comte. Gral. la supor. decision del tenor siguiente:

SEÑOR COMANDANTE GRAL.: Por las Leyes 21

Cordillera.

Villa de Sta. Fe.
Ydem de la Cañada.
Alcada. de Taos.
Ydm. de los Queres.
Ydm. de la Alameda.
Ydm. de Alburquerque.
Ydm. de la Laguna.
Passo del Norte.
A Sta. Fe.

y 22, Tito. 3, Lib. 6, de la Recopilacion de estos Reynos se prohíve, y defiende, que en las reducciones, y pueblos de Yndios, puedan vivir, ó vivan Españoles, negros, mulatos, ó mestizos, por haverse experimentado que algunos españoles que tratan, tragan, viven, y andan entre los Yndios, son hombres inquietos, y de mal vivir, ladrones, jugadores, viciosos, y gente perdida, y que por huir los Yndios de ser agraviados, dexan los Yndios sus pueblos, y

provincias, y los negros, mulatos, y mestizos a demas de tratarlos mal se sirven de ellos, les enseñan sus malas costumbres y ociosidades, y tambien algunos herrores, y vicios, que les pueden estragar, y pervertir el fruto que se desea en orden á su salvacion, aumento, y quietud; por cuyas razones se previene que sean castigados con graves penas, y no consentidos en los pueblos de los Yndios; y que los virreyes, presidentes, gobernadores, y justicias tengan mucho cuidado de hacerlo executar así donde por sus personas pudiesen, y en las demas partes, valiendose de ministros de toda integridad cuya prohibicion se estiende, aun quando los Españoles, mestizos, y mulatos hayan comprado tierras en los pueblos de los Yndios, y sus terminos por haver sido, su residencia en ellos, la causa principal de las opresiones, y molestias que padecian, dispensando unicamente que los mestizos, y zambaigos hijos de Yndios nacidos entre ellos, y que han de heredar sus casas, y haciendas puedan vivir en sus pueblos por ser cosa dura separarlos de sus padres; cuyas providencias encarga muy particu-

103 **larmte.** la Ley 1^a, Tito. 4, Lib. 7, á los Virreyes, Presidentes, y Gobernadores que las hagan guardar, y cumplir.

El vando expedido por el Govor. del Nuevo Mexico D. Juan Bapta. de Anza de que hace relazn. el R. P. Fr. Juan Bermejo, parece ser conforme á la disposicion de las citadas leyes, y estando encargado de su observancia y cumplimiento, ha podido, y debido ejecutarlo, mayormente quando segun expone el mismo padre ha procedido á ello en virtud de quejas de los Yndios, y por haver dado justos motivos para ser separados de sus pueblos algunos Españoles, mulatos, ó mestizos qe. residian en ellos en calidad de sirvientes de los padres ministros.

No admite duda, y antes bien es hecho constante y notorio, que las referidas leyes no han tenido, ni estan en observancia en la basta extension de las provincias que abraza este nuevo gobierno, en que apenas se encuentra mision, ó pueblo de Yndios, donde no vivan avecinados algunos Españoles, mestizos, mulatos, y demas castas, que llaman de razon; y buscando el origen de esta permission, ó tolerancia, tengo presente haver visto una executoria expedida por la real audiencia de Guadalupe en contradictorio juicio, declarando que la prohibicion contenida en ellas, no se estiende á los pueblos de Yndios situados en las fronteras, y hostilizados por los enemigos, en qe. lexos de ser perjudicial á los naturales el establecimto. y residencia de los Españoles, y gente de razon, les produce entre otros beneficios, el de la defensa que no podrian hacer por si solos, y el de que á su imitazn. y exemplo aprehendan á cultivar la tierra, y á aprovecharse de sus frutos y crias de que carecerian muchos, si la imitacion, y buen exemplo no les estimulase á tenerlas.

En la ynstrucion expedida en el Real de los Alamos á 23 de junio de 1769, por el Exmo. Señor D. Joseph de Galvez, Visitador Gral. que á la sason era de este reyno, despues de prevenir las reglas con que devian repartirse á los Yndios las tierras de sus pueblos, y hacerse las cuentas, ó matriculas de tributarios, dispuso en el Arto. 11, que las sobrantes, y realengas que quedasen fuera del termino de quatro leguas concedido á cada uno se repartiesen, y mercenasen a los legitimos Españoles que hubiese establecidos, ó que quisiesen avecinarse en los mismos pueblos; por dirigirse las soberanas, y piadosas intenciones de S. M. a que los Españoles, é Yndios vivan hermanados en sociedad, trato y comercio, para que reciprocamente se auxilien, y amen, como deven, desviando de los Yndios por este justo, y honroso medio las malas alianzas, y comunicaciones con otras castas, que tanto les perjudican. Y en el Arto. 13, dispuso igualmente que por hallarse establecidos en algunos pueblos de naturales otros vecinos de diferentes castas llamados comunmente de razon, concedia facultad á los comisarios repartidores, para que sin perjuicio de los naturales pudiesen señalarles iguales suertes que á estos, siempre que los curas, ministros, ó gobernadores Yndios les informasen, que los tales vecinos de razon no eran perjudiciales en los pueblos donde estuviesen establecidos, como regularmente sucede; y en el caso de no ser conveniente dexarlos en ellos, mando les hiciesen saber, que dentro de un mes mudasen su residencia á las villas ó pueblos de españoles mas inmediatos, donde se les daría establecimiento, entregandoles el correspondiente mandamiento, para que asi lo executasen, y se presentasen á los jueces res. de forma que asi por

la citada executoria, como por los referidos capitulos de la ynstrucion del Exmo. Señor D. Joseph de Galvez, parece haberse explicado, ó moderado la disposicion general de las expresadas Leyes 21 y 22, Tito. 3, Lib. 6, contrayendo unicamente su prohibicion á los Españoles, mestizos, mulatos, y zambaigos ociosos, vagamundos, y no casados que viven en los pueblos de Yndios, y les hacen daños, agravios, y molestias intolerables, los quales deven ser *hechados* de ellos, y obligados a que trabajen en sus oficios, los que los tuvieren, ó que aprehendan alguno, ó se pongan á servir para que no sean gravosos á la República, como lo previenen las Leyes 1^a. y 2^a, Tito. 4^o, Lib. 7, de la Recopilacion.

Y siendo estas las ultimas providencias que rigen en la materia, y que por no hallarse recopiladas, y no han podido tenerlas presentes el Governor. del Nuevo Mexico: me parece, que á fin de que instruido de ellas las haga cumplir, guardar y ejecutar, podra V. S. si fuer servido acordar, y mandar se le pase orden para que no impida, que se establezcan, avecinden, y vivan en los pueblos de Yndios los 105 legitimos Españoles casados que tuviesen bienes raizes, ú oficio de que mantenerse en ellos, sin causar molestias, ni ser gravosos á los naturales, y que lo mismo execute por lo respectivo á los mulatos, mestizos, zambaigos y demas castas que llaman de razon, siempre que por informes de los R. R. P. P. ministros de los gobernadores de los mismos pueblos, y de los justicias de sus respectivos partidos, le constare no ser perjudiciales, ni gravosos á los naturales; expeliendo, y haciendo salir de entre ellos á los solteros ociosos, vagamundos, y gente de mal vivir, á quienes obligara á que pasen á residir en los pueblos, y villa de Españoles, y á que en ellos exersan sus oficios, si los tuviesen, ó en su defecto los aprehendan, se pongan á servir, ó se dediquen á la agricultura, persiguiendo, y castigando con todo rigor á los que se mantuvieren en su vida licenciosa, y vagamunda para evitar el mal exemplo, y demas perjuicios que resultan á la Republica, ó resolvera V. S. sinembargo sobre todo lo que fuere de su agrado. Arispe, 23 de Enero de 1783.

GALINDO NAVARRO.

Arispe, 24 de Enero de 1783. Como parece al Aseior, remitiendose copia de su dictamen, y de este decreto al Govr. Dn. Juan Bapta. de Anza, y dandose aviso de la providencia al P. Custodio Fr. Juan Bermejo.

DE CROIX.

Arispe, 24 de Henero de 1783, son copias de sus originales de que certifico.

CHRISTOBAL CORVALAN.

Y á efecto de poner en practica lo mandado observar en el presedente supor. decreto mando que haciendose publico y notorio este vando en todas las jurisdicciones de esta prova. y pueblos de Yndios asi sus correspondientes gobernadores, y alcaldes mayores procederan con la precisa brevedad a informarme de las circunstancias de conducta, vienes raizes, oficios y estado con que subsisten las familias ó yndividuos que tengan recidencia en los enunciados pueblos de Yndios: Lo que ygualmte. ruego y encargo á sus respectivos P. P. ministros al qual intento les han manifestado este los expreados alcalde mayores, para en consideracion de

los ynformes que deven proceder determinaran lo que convenga teniendo entendido que se deven exceptuar de lo prevenido, los pueblos
 106 de Taos y Abiquiu en cuyos vezindarios por lo tanto, y como siempre no se hara novedad, mas por lo perteneciente á los que en ellos haia de vida licenciosa, que causen escandolos, malos tratamientos ó gravámenes á los Yndios, de luego á luego providenciaran los precitados justicias maiores á poner en execucion lo que sobre ellos se manda; y fha. la ineinuada publicacion para que llegue a noticia de todos los abitares de esta prova. puesta razon de ella por el untimo justicia mayor lo debolbera a mi poder para archivarlo donde corresponde. Asi lo providencie, mande, y firme en esta villa de Sta. Fe en treze dias del mes de Marzo de mil setecientos ochenta y quatro años ante los ynfraescriptos testigos de mi assa. a falta de escrivano publico ni rl. por no haverlo en todo este gobierno, de que doy fe.

JUAN BAPTA. DE ANZA. [Rúbrica.]

Assa.: VIZTA. FRANCO. [Rúbrica.]

Assa.: FRANCO. PEREZ SERRANO. [Rúbrica.]

Villa de Sta. Fee y Marzo 18 de 84 años.

Se publico el antecedente Bando por mi, Dn. Antto. Jose Ortiz, con todas las solemnidades acostumbradas y para que conste lo firme en dha. villa dho. dia, mes y año.

ANTTO. JOSE ORTIZ. [Rúbrica.]

Villa de Sta. Cruz de la Cañada y Marzo 25 de 1784.

En cumplimto. de lo mandado en el bando que antese de yo, Dn. Jose Campo Redondo, alede. mor. y captn. á grra. de dha. villa, lo publique en ella, y en los demas partidos y pueblos de mi cargo; y por qe. conste lo firmo y sigue segun el orden de su cordillera; de qe. doy fee.

JOSE CAMPO REDONDO. [Rúbrica.]

San Geronimo de Taos, y Abril 6 de 1784.

Se publico este bando por mi, Dn. Christobal Vegil, alcalde mayor y capn. a guerra de dho. pueblo, con todas las solemnidades acostumbradas, y para que conste lo firme en dho. pueblo dho. dia, mes y año.

CHRISTOBAL VEGIL. [Rúbrica.]

107 En este pueblo de Sto. Domingo de lo Queras en veinte y quatro dias del mes de Abril de 1784 años, en obedeimiento de lo mandado, en el bando que antecede, yo, Dn. Anto. de Armenta, alcalde mayr. y capitan aggra. de dhos. Pueblos, publique en este y en los demas que pertenecen a mi cargo, con todas las formalidades acostumbradas y para que conste lo firme en dicho pueblo dho. dia, mes y año; de que doi fee.

ANTONIO DE ARMENTA. [Rúbrica.]

En este pueblo de San Carlos de la Lameda, en siete dias del mes de Mayo de 1784 años, en obedeimiento de lo mandado en el bando que antese de yo, el alcalde mayor y capn. a guerra, Dn. Nereo Antto. Montoya, hice publicar el dho. con todas las formalidades acostumbradas en todos los partidos de mi cargo y para que conste lo firme en dho. dia, mes y año; de que doi fee.

NEREO ANTTO. MONTOKA. [Rúbrica.]

Villa de Sn. Phelipe de Albuquerque y Maio quince de mil setestos. ochenta y quatro años, en obedesimiento de lo mandado en el bando que antese de, yo, el alce. mayor y capn. á Gucea. Dn. Manuel de Aeteaga, hise publicarlo en esta y en los demas partidos de cargo con todas las solenidades acostumbradas y para su constancia lo firme.

MAN. DE ARTEAGA. [Rúbrica.]

En este pueblo de Sor. Sn. Jose de la Laguna en 9 dias del mes de Junio, se publico el bando qe, antese de con todas las formalidades acostumbradas y para qe. coste su obedeciminto lo firme en este año de 1784; de qe. doi fe.

FRANCO. LOBERA, [Rúbrica.]

Alde. Maor.

Pueblo de Nuestra Sra. de Guadalupe del Paso del Rio del Norte, y Agosto 22 de 1784.

Cordillera.
Sn. Lorenzo del Rl.

Senecu.

108 Ysleta.

Socorro.

Este dia se publico en dho. pueblo el bando antecedente con las formalidades acostumbradas, y mando á los justicias de los pueblos de esta jurisdiccion egecuten lo mismo poniendo a continuacion la razon de haverlo hecho, así mismo les ordeno a dhos. justicias, y a los goves. de los pueblos de Yndios qe. inmediatamente prozedan a informarme si hay alguno o algunos en los espresados pueblos qe. no viva con las circunstancias qe. previene el antecedente bando para separarlo de el o de ellos manifestando á los reverendos padres misioneros el contenido de este bando, y disposicion del Sor. Govor. de esta provincia a fin de qe. contribuyan por su parte a lo dispuesto por el Sor. Comte. Gral. y para su constancia lo, puse por diligencia qe. firme con testigos de asistencia a falta de escrivano publico ni rl. que no le hay en el termino que dispone el dro. de qe. certifico.

EUGENIO FERNANDEZ. [Rúbrica.]

De assa.: MIGUEL MORALES. [Rúbrica.]

De assa.: JUAN MATEO DE MIRANDA. [Rubrica.]

Pueblo de Sn. Lorenzo el Real y Septe. 8 de 1784, en dho. dia se publico el vando qe. antecede con las formalidades y solemnidad acostumbrada, y por qe. conste lo firme con los testigos de mi asistencia.

DIEGO CANDELARI. [Rubrica.]

De assa.: JUAN MATEO CANDELARI. [Rubrica.]

De assa.: JOSE MARIA DE VALASCO. [Rubrica.]

Pueblo de Sn. Anto. de Senecu, Septiembre 12 de 1784, en dho. dia se publico el vando que antecede con las formalidades, y solemnidad acostumbrada y por qe. conste lo firme con los testigos de mi asistencia.

MANUEL BERNARDINO BORREGO. [Rubrica.]

Testigo: ANDRES DE ESPINOSA. [Rubrica.]

Testigo: DOMINGO ESPINOZA. [Rubrica.]

Pueblo de Sn. Antonio de Corpus Christi, de la Isleta y Setiembre 13 de 1784 as., en dho. dia se publico el vando que antese-
109 de con las formalidades y solenidad acostumbrada y porque coste lo firme con los testigos de mi asistencia.

JOSE MARIA DURAN. [Rubrica.]

De assa.: JPH. ALDERETE. [Rubrica.]

Testigo: LEONARDO DURAN. [Rubrica.]

Pueblo de Nra. de la Purissima Consepcion del Socorro y Sepre. 21 de 1784, en este dia se publico en dho. pueblo el bando antecedente con las formalidades acostumbradas y para qe. conste lo firme con los testigos de assa.

VICENTE LOPEZ. [Rubrica.]

De assa.: JUAN ANTONIO BARELA. [Rubrica.]

De assa.: JULIAN DE ARCHULETA. [Rubrica.]

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[Translation of portion of archive 1342.]

Don Juan Bautista de Anza, colonel of cavalry of the Royal Armies of His Majesty, governor and commander of the Province of New Mexico.

Whereas, under date of Jan. 24, of the year last past, the commandant general has been pleased to direct to me the superior decision of the following tenor:

List.

- Town of Santa Fe.
- " " La Canada.
- Jurisdiction of the alcalde of Taos.
- The same of the Queres.
- " " " Alameda.
- " " " Alburquerque.
- " " " Laguna.
- Paso del Norte.
- To Santa Fe.

SIR COMMANDING GENERAL: By the 21 and 22 laws, title 3d, book 6, of the recopilation of these kingdoms, Spaniards, negroes, mul/at'oes, and mustees are prohibited and forbidden to reside in the Indian reserves and towns (pueblos), as several of the Spaniards who trade, travel through, live and have intercourse with the Indians are known to be men of turbulent conduct, bad habits, thieves, gamblers, vicious, and vagrants, and the Indians to escape injury

from them are compelled to abandon their towns (pueblos) and provinces, and the negroes, mulattoes, and mustees, besides treating them badly, make servants of them, learn them bad habits and idleness, as well as many errors and vices which are calculated to make them vicious and to thwart the efforts made for their salvation, increase, and prosperity, which evils are ordered to be punished with severe penalties and forbidden to enter the Indian towns (pueblos), and that the viceroys, presidents, governors, and authorities shall use every effort to carry the same into execution as far as lies in their individual power, as well as their subordinates, availing themselves of ministers of known integrity, which prohibition extends to those Spaniards, mu'tees, and mulattoes who have purchased lands in the Indian towns (pueblos) or within their limits, their residence therein being the principal cause of the opp'essions and disturbances suffered by them. The exception to this rule, only, are those mustees and children of negro's with Indian women born in the pueblos (towns), and who are to inherit their houses, flocks; these are

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allowed to reside in their towns (pueblos), as it would be cruel to separate them from their parents, the performance and fulfillment of which provisions are especially enjoined upon the viceroys, presidents, and governors by law 1st, title 4, book 7.

The order issued by Don Juan Baptista de Anza, governor of New Mexico, to which reference is made by the Rev. Father Friar Juan Bermejo, appears to be in conformity with the provisions of the aforesaid laws, and being charged with their performance and compliance he was authorized and it became his duty to execute them, more particularly, as the said father states he acted upon complaints of the Indians and just causes proven to him, why certain Spaniards, mulattoes, or mustees, who resided in the towns (pueblos) in the capacity of servants to the priests, should be removed therefrom.

There is no doubt, and indeed it is well known, notorious, and public, that the aforementioned laws have not been nor are complied in the vast provinces embraced within this new government, in which hardly a mission station or Indian town (pueblo) is to be found where several Spaniards, mustees, mulattoes, and other races do not reside, and in looking for the origin of this permission I remember having seen an order issued by the royal audience of Guadalajara declaring expressly to the contrary, stating that the prohibition therein contained did not apply to the Indian towns (pueblos) situated on the frontiers and liable to attacks from the Indians, in which the residence of Spaniards and other races, instead of being in injury to them, it produces among other benefits the advantage of defence, which they would not have if left alone, and also that by their example and advice they would learn how to cultivate the soil and derive greater benefits from their crops and stock, which many
112 would not have were they not stimulated by imitation and the good example set to them.

In the instructions issued at the Real de los Alamos on the 23d June, 1769, by His Excellency Don Jose de Galvez, then visitor-general of this kingdom, after stating the rules to be observed in the distribution of lands to the Indians for the formation of towns and the manner of making out the accounts or certificates for , he directed, in article 11th, that the unoccupied land remaining beyond the limits of four leagues granted to each town (pueblo) be distributed among and granted to legitimate Spaniards who may have established themselves or who wished to join said town (pueblos), the merciful and sovereign intentions of His Majesty being that the Spaniards and Indians should live together as brothers in society, trade, and commerce; that they aid each other reciprocally, and love each other as they should, preventing the Indians by this just and honorable means from contracting pernicious alliances and communication with other races which is so injurious to them. And in article 13 he declared also other races, being established in certain Indian towns (pueblos) gave authority to the distributing commissaries to give them an equal amount of land with the Indians, providing the curates, ministers, or Indian governors stated that the residence of said other races was injurious to the town (pueblo) where they were situated, as generally is the case; and in case it was not convenient to allow them to reside therein, he directed they should be notified to move their residence

to the nearest towns or settlements of Spaniards within one month, where they would be located, delivering to them the proper warrant, ordering them to comply therewith, and present themselves to the royal justices. Therefore, according to the foregoing decree, as well as by the aforementioned chapters of the instructions of H. C. Don Jose de Galvez, the general order contained in the 21st & 22d law, title 3d, book 6, appears to be explained or modified, extending the prohibition to those Spaniards, mustees, mulattoes, and children of Indians and negroes who are idle, vagrants, and single who reside in the Indian towns (pueblos),
 113 and cause trouble, damage, and injury, who should be ejected from the towns and compelled to work at their trades, those who have any, or to learn one, or to hire themselves out, so as not to be a burden on the Republic, as provided in the 1st and 2d laws, title 4th, book 7th, of the Recopilation.

These being the last orders governing the case, and not having been compiled, the governor of New Mexico has been unable to have them before him, it appears to me that upon his being informed thereof that he cause them to be performed, fulfilled, and executed, and your excellency, if you see proper, can direct and order to be issued to him not to prevent the residence, establishment, and participation of bona fide married Spaniards who have any real estate or trade with which to support themselves in the Indian towns (pueblos) without causing disturbances or being a burden to the natives, and that the same rule apply to mulattoes, mustees, children of blacks and Indians, and other mixed races upon the report of the rev. missionaries, of the governors of the towns, and the justices of the respective jurisdictions that they are not injurious or burdensome to the natives, expelling and causing those single persons who are idle, vagabonds, and lead a vicious life, to leave the towns, and compel them to live in the towns and settlements of Spaniards and devote themselves to their trades, if they have any, or learn one, or cultivate the soil, pursuing and chastising with all severity those who lead a vicious and corrupt life, avoiding by this means the evil example they would set and other injuries to the Republic; or your excellency may, however, take such steps as you may deem proper.

Arispe, January 23d, 1783.

(Signed)

GALINDO NAVARRO.

Arispe, January 24, 1783. I approve the report of the councillor, and order a copy of his report and of this decree to be forwarded to Governor Don Juan Bautista de Anza, and information be given to the Rev. Father Friar Juan Bermejo of the action taken in the premises.

(Signed)

DE CROIX.

I certify the foregoing to be a copy of the originals.

Arispe, January 24, 1783.

(Signed)

CHRITOVAL CORVALOU. [Rubric.]

114 And for the purpose of putting into execution what is ordered to be observed in the foregoing superior decree, I command that when this order is made public and notorious in all the jurisdictions of

this province and Indian towns their corresponding governors and chief alcaldes proceed with the necessary promptness to make reports to me of the circumstances of conduct, real property, offices, and condition in which are living the families and individuals who reside in said Indian towns; which I likewise request and commend to their several ministers, to which intent the said chief alcades will make this known to them, in order to determine what may be proper'y in consideration of these reports, which must be made first, it being understood that the towns of Taos and Abiquiu, with whose residents therefore and as heretofore no change shall be made, but with respect to those therein who lead a licentious life, who cause scandals, bad treatment, or burdens to the Indians, the afore-said chief justice shall take steps at once to put into execution what is ordered with regard to them, and when the said publication has been made so as to come to the notice of all the inhabitants of this province and note thereof made *made* by the last chief justice, he will return it to my power to place it in the corresponding archive. Thus I provided, ordered, and signed in this town of Santa Fe on the thirteenth day of the month of March, seventeen hundred and eighty-four, before the undersigned witnesses of my attendance, for lack of a public or royal notary, there being none in all this jurisdiction, to which I certify.

JUAN BAUTISTA DE ANZA. [Rubric.]

Attending witness: VICENTE TRANCOSO.

Attending witness: FRANCISCO PERES SERRANO.

Town of Santa Fe, and March 18 of the year 1784:

The foregoing decree was published by me, Don Antonio Jose Ortiz, with all the customary ceremonies; and in witness whereof I signed
115 it at said town on said day and in said month and year.

(Signed)

ANTONIO JOSE ORTIZ. [Scroll.]

Town of Santa Cruz de la Canada, and March 25, 1784:

In compliance with what is commanded in the foregoing decree, I, Don Jose Campo Redondo, chief alcalde and war captain of said town, published it therein and in the other districts and towns under my charge; and in witness thereof I signed it, and it is forwarded according to the order in the list; to which I certify.

(Signed)

JOSE CAMPO REDONDO. [Scroll.]

San Geronimo de Taos, and April 6, 1784:

This decree was published by me, Don Cristoval Vegil, chief alcalde and war captain of said pueblo, with all the customary ceremonies; and in witness thereof I signed it at said town on said day and in said month and year.

(Signed)

CRISTOBAL VEGIL. [Scroll.]

At this town of Santo Domingo of the Queres, on the twenty-fourth day of the month of April, of the year 1784, in obedience to what is commanded in the foregoing decree, I, Don Antonio de Armenta, chief alcalde and war captain of said towns, published (it) therein and in the

others that are under my charge, with all the customary formalities; and in witness thereof I signed it in said town on said day and in said month and year; to which I certify.

(Signed)

ANTONIO DE AZMONTA. [Scroll.]

116 At this town of San Carlos de la Alameda, on the seventh day of the month of May of the year 1784, in obedience to what is commanded in the foregoing decree, I, Don Nerio Antonio Montoya, caused the aforesaid to be published with all the customary formalities in all the districts under my charge; and in witness thereof I signed it on said day, month, and year, to which I certify.

(Signed)

NERIO ANTONIO MONTOYA. [Scroll.]

Town of San Felipe de Albuquerque, and May fifteenth of the year one thousand seven hundred and eighty-four. In obedience to what is commanded in the foregoing decree, I, the chief alcalde and war captain, Don Manuel de Arteaga, caused it to be published therein and in the other districts under (my) charge with all the customary ceremonies; and in witness thereof I signed it.

(Signed)

MANUEL DE ARTEAGA.

At this town of San Jose de la Laguna, on the fourth day of the month of June, the foregoing decree was published with all the customary formalities; and as evidence obedience thereto I signed it in this year 1784, to which I certify.

(Signed)

FRANCISCO LOBERA, [Scroll.]
Chief Alcalde.

Town of Our Lady of Guadalupe of El Paso del Rio del Norte, and August 22, 1784.

List.

San Lorenzo del Real.
Senecn.
Ysleta.

Socorro.

This day the foregoing decree was published in said town, with the customary formalities, and I command the justices of the towns of this jurisdiction to execute the same, placing at the end of this, my order, the note of having done so, and also I command the said justices and the governors of the Indian towns to proceed immediately to report to me as to whether there is any person or persons in the said towns who do not live under the circumstances prescribed in the foregoing decree, in order to remove him or them therefrom, making known to the reverend Missionary fathers the contents of this decree and the order of the governor of this province, to the end that on their part they may lend their aid to the commands of the commandant general; and in witness thereof I executed these proceedings, which I signed with attending witnesses for lack of a public or royal notary, of which there is none within the distance provided by law, to which I certify.

(Signed)

EUGENIO FERNANDEZ. [Scroll.]

Attending: (Signed) MIGUEL MORALES. [Scroll.]

Attending: (Signed) JUAN MATEO DE MIRANDA. [Scroll.]

Town of San Lorenzo, El Real, and September 8, 1784. On said day the foregoing decree was published with the customary formalities and

ceremonies, and in witness thereof I signed it with my attending witnesses.

(Signed) DIEGO CANDELARI. [Scroll.]

Attending: (Signed) JUAN MATEO CANDELARI. [Scroll.]

Attending: (Signed) JOSE MARIA DE VELASCO.

Town of San Antonio de Seneeu, September 12, 1784. On said day the foregoing decree was published with the customary formalities and ceremonies, and in witness thereof I signed it with my attending witnesses.

(Signed) MANUEL BERNARDINO BORREGO. [Scroll.]

Witness: ANDRES DE ESPINOSA. [Scroll.]

Witness: DOMINGO ESPINOSA. [Scroll.]

118 Town of San Antonio de Corpus Christi de la Ysleta and September 13 of the year 1784. On said day the foregoing decree was published with the customary formalities and ceremony, and in witness thereof I signed it with my attending witnesses.

(Signed) JOSE MARIA DURAN. [Signed.]

Attending: (Signed) JOSEPH ALDERETE. [Scroll.]

Witness: LEONARDO DURAN. [Signed.]

Town of Our Lady of the Most Pure Conception of El Socorro and September 17, 1784. On this day in said town the foregoing decree was published with the customary formalities, and in witness thereof I signed it with the attending witnesses.

(Signed) VICENTE LOPEZ. [Scroll.]

Attending: (Signed) JULIAN DE ARCHULETA. [Scroll.]

Attending: (Signed) JUAN ANTONIO BARELA. [Scroll.]

119 *Portion of Archive 1342.*

El P. custodio de estas Misiones Fr. Juan Bermejo me hizo presente que V. S. havia mandado publicar un bando para que ningun vecino español, mulato y de otras castas, que llaman de razon, se establezca, ni subsista en pueblos de Yndios bajo la multa de cincuenta ps. en oro de minas.

Esta Providencia aunque es conforme a las leyes 21 y 22, tito. 3º, lib. 6º de la Recopilacion de estos Reynos, admite las modificaciones que me ha expuesto el asesor de esta comandancia gral. en el dictamen de que incluyo copia certificada, á las que devera V. S. arreglarse en lo sucesivo, respecto a haverme conformado con el referido dictamen: lo que prevengo a V. S. para su puntual y exacto cumplimiento.

Dios guarde a V. S. muchos años. Arispe 24 de Enero de 1783.

EL CAYRO. DE CROIX. [Rúbrica.]

Sor. Dn. JUAN BAPTA. DE ANSA.

120 *Translation of letter forming a part of archive No. 1342, in surv. gen.'s office.*

The father custodian of those missions, Friar Juan Bermejo, has represented to me that your excellency had ordered published a decree to

the effect that no Spanish citizen, mulatto, or person of other mixed races that are called civilized races [de razon] should settle or remain in Indian towns under the penalty of a fine of fifty dollars in uncoined gold.

This provision, although it is in conformity with laws 21 and 22, title third, book sixth of the Recopilacion of these kin'doms, is subject to the modifications that the consulting attorney of this commandant-general's office has set forth for me in the opinion, of which I enclosed a certified copy; by which modifications your excellency should be governed in the future, in view of my having approved the said opinion, of which I advise your excellency for your prompt and exact compliance.

God preserve your excellency many years. Arispe, Jan. 24, 1783.

(Signed) THE CHEVALIER DE CROIX. [Scroll.]

To Señor Don JUAN BAUTISTA DE ANZA.

121 *Testimony taken before the surveyor-general, offered by the defendant.*

POJUAQUE.

Jose de Jesus Montoya, governor; Juan Bautista Sanchez, war chief, and Matias, preserver of the peace of the pueblo of Pojuaque, being duly sworn by the surveyor-general, at his office, at Santa Fe, in the presence of General A. G. Mayers, Indian agent for the pueblos, they answered the interrogatories propounded to them in the following manner, to wit:

Question. Did the pueblo of Pojuaque receive a grant for the lands they occupy from the King of Spain?

Answer. They did receive a grant from the King of Spain.

Question. Where is the grant now?

Answer. We do not know where it is now.

Question. Do you when and how the pueblo was deprived of its possession?

Answer. About forty years since a land suit occurred between the pueblo and a Mexican, and the title deed of the pueblo was presented to the alcalde of Chimayo, Bautista Vigil, as evidence in the case, since which time the grant has not been heard of.

Question. Have you any tradition of the length of time the pueblo has been in existence?

Answer. The bell of the church bears date of 1710. The bell was cast for the church.

Question. Has the pueblo been occupied continuously from that date up to the present time by your people?

Answer. It has been so occupied.

Question. Do you know if the grant of the pueblo called for one league from the church towards the four cardinal points of the compass, and if you claim the same amount of land granted to the other pueblos?

Answer. We claim one league from the corners of the church towards the four cardinal points, and are entitled to the same amount of land granted to the other pueblos.

Question. Do you raise wheat, corn, fruit, and stock, and do you subsist entirely by agricultural pursuits?

Answer. We raise wheat and corn, and depend on what we raise for our subsistence. We do not raise enough to support us comfortably, but live on what we raise, although we suffer sometimes.

122 Governor, JOSE DE JESUS MONTOYA (his x mark).
War Chief, JUAN BAUTISTA SANCHEZ. [Rubric.]
Preserver of the Peace, MATIAS (his x mark).

Sworn and subscribed before me this 28th day of June, 1856.

WM. PELHAM,
Surveyor-General of New Mexico.

123 *Testimony taken before surveyor-general, offered by defendant.*

NAMBE.

Juan Lozario Padilla, governor; Antonio Vigil, lieutenant-governor; Jose Maria Ruibal, chief, of the pueblo of Nambe, being duly sworn by the surveyor-general, at Santa Fe, in the presence of General A. G. Mayers, Indian agent for the pueblos, they answered the interrogatories propounded to them in the following manner, viz:

Question. Did the pueblo of Nambe receive a grant for the lands they occupy from the King of Spain?

Answer. From our ancestors we have been informed that the grant was in the possession of the pueblo.

Question. Do you when and how the pueblo was deprived of its possession?

Answer. Many years since a dispute arose between the Indians of the pueblo and several Mexican citizens who wished to trespass upon their land. The case was taken before the acting governor of the territory, to whom the governor of the pueblo delivered the grant, and although they have claimed it several times, the acting governor refused to deliver it up, since which time it has not been seen or heard of.

Question. Have you any tradition of how long the pueblo has been in existence, and was the oldest man in it born there?

Answer. From tradition we know the pueblo was settled at the same time the others were; the oldest man in the pueblo was born there.

Question. Do you know if the grant to your pueblo calls for one league towards the four points of the compass?

Answer. We claim one league in each direction from the four corners of the church.

JUAN ROSARIO, *Governor.*
ANTONIO (his x mark) VIGIL, *Lieut. Gov.*
JOSE MARIA (his x) RUIBAL, *Chief.*

Witness:

A. G. MAYERS,
Agent for the Pueblo Indians of N. M.

Sworn and subscribed before me this 29th day of September, 1856.

WM. PELHAM,
Surveyor-General.

124 And afterwards, to wit, on the 19th day of October, 1895, the same being the 12th day of said term, the following among other proceedings were had, to wit:

U. S. Court of Private Land Claims.

MARIA DE LA PAZ DE CONWAY ET AL.	}	No. 112.
<i>vs.</i>		
THE UNITED STATES OF AMERICA, THE		
Pueblo of Pojoaque, and the Pueblo of Nambe.		

October term, A. D. 1895, Santa Fe district.

Upon consent of all parties to this cause, made in open court this eleventh day of October, A. D. 1895, it is ordered that the pueblo of Pohu-
aque and the pueblo de Nambe be made parties herein, and that the
petition of the claimants be deemed amended accordingly.

And further, as to certain original muniments of title produced from
the custody of the claimants introduced in evidence, that the annexed
abstract thereof, in English, made by Mr. Henry O. Flipper, be taken
and considered as the equivalent of the originals.

125 And further, that as part of the evidence adduced in behalf of
the defendant there be received and considered the deposition of
Juan Lozario Padilla, Antonio Vigil, and Jose Maria Ruibal, Jose de
Jesus Montoya, Juan Bautista Sanchez and Matias, taken before the sur-
veyor-general for New Mexico in the cases of the pueblo of Pohuaque
(Report No. N) and the pueblo of Nambe (Report No. R), the said wit-
ness being now dead.

JOSEPH R. REED,
Chief Justice.

126 And afterwards, to wit, at a stated term of the Court of Private
Land Claims, begun and held at Santa Fe, on the seventh day of
October, A. D. 1895, and on the sixteenth day of said term, the same
being the twenty-fourth day of October, A. D. 1895, the following among
other proceedings were had, to wit:

127 *Decree.*

In the Court of Private Land Claims, October term, 1895.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL.,	}
<i>versus</i>	
THE UNITED STATES.	

This cause having been duly tried at a former day of the present term,
and having been submitted to, and taken under advisement by, the court,
the court being now sufficiently advised in the premises:

It is on this 24th day of October, 1895, found, declared, adjudged, and
decreed by the court that, on the 2nd day of January, 1731, Juan Domingo

de Bustamente, governor and captain-general of the province of New Mexico, granted to Bernardino de Sena, Tomas de Sena, and Luis Lopez a certain tract of land situate in said province, and now in the county of Santa Fe, Territory of New Mexico, and known as the Cuyamungue tract; and that under the commission and instructions of the said governor, Bustamente, the said granted tract was, on the 22nd day of January, 1731, duly delivered in actual possession to the said grantees above named by Domingo Vigil, lieutenant chief alcalde of the new village of Santa Cruz. That the said tract of land so granted and so delivered in possession is bounded and described as follows: On the north by the lands of Lazaro Trujillo; on the south by the lands of the pueblos of Tesuque, which reach to an arroyo that comes down from east to west to the river of Cuyamungue, and on said arroyo there are two mounds of bluestone, one on one side and the other on the opposite side thereof a little above said arroyo; on the east some hills and the road that leads to the pueblo of San Francisco de Nambe; and on the west some hills and forests on the other side of the Cuyamungue River. That the said tract of land so granted has remained in the possession of the said grantees and their heirs and successors from the date of said grant to the present time. That the petitioners in this case have shown themselves possessed of such
 128 an interest as entitled them to maintain this action. That the said grant so made was a complete and perfect title at the date of the treaty of Guadalupe Hidalgo in the year 1848.

It is therefore further adjudged and decreed that the said grant so made be and the same hereby is confirmed as a complete and perfect title to the extent of the boundaries called for in the grant and act of possession as above set forth to the heirs and legal representatives of the said grantees, Bernardino de Sena, Tomas de Sena, and Luis Lopez.

And it is further ordered, adjudged, and decreed that this confirmation shall in nowise affect the rights of the pueblos of Pojoaque and Nambe (if any they have) as between them and the said confirmees, under their patents issued by the United States Government, and shall not confer any right or title to any gold, silver, or quicksilver mines and the minerals thereof in the confirmees within the boundaries of said grant, unless said confirmees shall have become otherwise entitled thereto in law or in equity, and that this confirmation is made subject to all other terms and conditions provided in the act of Congress creating this court, respecting confirmations of private land claims.

JOSEF R. REED,
Chief Justice.

SANTA FE, NEW MEXICO, *October 24th, 1895.*

129 And be it further remembered that thereafter, to wit, on the 24th day of October, A. D. 1896, the opinion of the court in said

cause was filed in the office of the clerk, which said opinion is in the words and figures following, to wit :

130 In the U. S. Court of Private Land Claims. District of New Mexico. October term, A. D. 1895.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL.,	} No. 112.
petitioners,	
against	
THE UNITED STATES OF AMERICA, DEFENDANT.	

Involving the title to the property claimed under what is known and commonly called the "Cuyamungue Grant," in Santa Fe County, Territory of New Mexico.

Opinion of the court, by Mr. Justice Murray.

Delivered and filed this day of , 1895.

131 Mr. Justice MURRAY delivered the opinion of the court.

The petition in this case is filed under the provision of the 8th section of the act of Congress approved March 3rd, 1891. (22 Stats. at Large, 854, C. 539.) It appears from an examination of the expediente offered in evidence as the basis of the claim, that in the year 1731 Bernardino de Sena, Thomas de Sena, and Luis Lopez, presented a petition at Santa Fe, New Mexico, to Juan Dom. de Bustamante, governor and captain-general, asking for "the surplus land in the abandoned pueblo of Cuyamungue as royal, public, and uninhabited." The boundaries of the grant are set out in the petition. On the 2nd day of January, 1731, the governor granted the land prayed for, and in the granting decree directed the chief alcalde of the new village of Santa Cruz to notify all the adjoining landowners of the grant so made by him, and if there was no objection to the grant, the alcalde was directed to put the petitioners in royal possession. On the 22nd day of January, 1731, the alcalde, Domingo Vigil, put Bernardino de Sena, one of the petitioners, in royal possession of the land granted. In the act of possession it is stated by the alcalde that he "caused all the Indians, governors, and captains to assemble, and notified them of what his excellency ordered and commanded, by reading to them the said decree and giving them to understand that if they had any objections whatever to make to the grant of land made by his excellency, the said governor, to Bernardino de Sena, to make it to him freely, that they would be heard in justice; and being informed of said decree they jointly and severally said that they made no objection whatever, and that it did not in anywise injure them." * * * After reading the grant to other adjoining owners of land and being informed by them that they had no objections to offer, the alcalde said: "I proceeded with my attending witnesses to the pueblo of Cuyamungue, and having examined the boundaries," he put the said Bernardino de Sena in possession of the land. The grantees, their heirs and assigns have been in possession of the land granted up to the present time, a period of 164 years. It appears from deeds and other documents filed by

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the petitioners, derailing title from the original grantees, that as early as 1733 the place was known as the "rancho of Cuyamungue." In the year 1805 Governor Alencaster approved an order of an alcalde restraining the Indians of Tessuque from constructing an irrigating ditch to the prejudice of the parties in possession of said land. The expediente constitutes a complete and perfect title under the laws of Spain in force in New Mexico at the date of the grant, and the title and possession under it have always been recognized and respected by the Governments of Spain and Mexico. The petitioners show such an interest in the grant as entitles them under the provisions of the act of March 3rd, 1891, to ask this court to confirm the same.

The difficulty in the case grows out of the fact that the Indian pueblos of Nambe and Pojoaque instituted proceedings before the surveyor-general of New Mexico under the act of July 22, 1854, for four leagues of land each. The surveyor-general recommended that the land asked for be granted. Congress confirmed a grant to each of said pueblos for four square leagues as recommended. The grants to said pueblos have been surveyed and patents for them issued. The surveys as made cover all the land of the pueblo of Cuyamungue granted to the original grantee in this case, except about 100 acres. It is insisted by the Government's attorney for said pueblos that the land covered by their patents should be excepted out of the decree of confirmation of the grant of 1731.

The pueblos of Nambe, Pojoaque, and Cuyamungue were in existence as early as 1541, when the Spaniards first visited this country. (See Bandelier's *Investigations Among the Indians of the Southwestern United States*," part 1, American series 3, page 123.) They were pueblos in 1692, 3, 4, 5, and 6. (See Bancroft's *History of Arizona and New Mexico*, pages 206, 201, 212, 216.) The Indians of these
 133 pueblos belonged to the Tehnas tribe or nation. It is not known definitely when the pueblo of Cuyamungue was abandoned, but it was most likely about the close of the 16th century.

The surveyor-general proceeded on the idea that as a matter of law all the Indian pueblos were entitled to four square leagues of land measured from the church or center of the pueblo. This seems to have been the prevailing opinion of the officials in New Mexico, and Congress, on the recommendation of the several surveyors-general, has confirmed to a large number of Indian pueblos in New Mexico that quantity of land.

I have examined all the laws of the Indies in relation to Indian pueblo lands, and have failed to find any law that can by any possibility be construed to sustain the opinions of the surveyors-general.

(Many of these laws have never before been translated into English, to my knowledge, and I therefore attach them to this opinion.)

The first law bearing directly on this question is the ordinance of May 26th, 1567. It prov'es that stock farms should not be located nearer than 1,000 varas from the settlement and houses of Indians. The law of 1573 and 1618 provided "that the sites where towns or settlements are to be made shall have conveniences of water, land, timber, entrances and exits, farms, and town commons of one league in length, where the Indians can keep their stock without its being mixed with other stock of the Spaniards."

The cedula of June 4th, 1687, reviews all former laws on the subject and provides that the Indians shall have six hundred varas to each wind measured from the last house on each side of the town, and prohibits stock farms from being located nearer than 1,100 varas from the last house on each side of the town. This law also gives the viceroys authority to grant to the pueblos any lands in addition to what is provided which, in his judgment, the Indians may need.

134 The cedula of July 4th, 1695, provides that in measuring the 600 varas and 1,100 varas provided for by the cedula of June 4, 1687, the beginning point should be the church or center of the town, and not from the outside houses. The reason for this change is fully set out in said cedula. This law provides for a grant to each Indian pueblo of about 839 acres. The quantity of land to which an Indian pueblo is entitled can only be determined by the grant itself. The viceroys were authorized to grant land to pueblos in any quantity they might see fit, and it might be surveyed in any shape he might direct, or they could limit the grant to the 1,100 square varas prescribed by law, but in that event a grant for that quantity must be issued. The fact that the pueblo of Cuyamungue was abandoned did not extend the boundaries of the pueblos of Nambe and Pojoaque or confer any rights on said pueblos to the land which had belonged to the pueblo of Cuyamungue. It was held by the governor and captain-general of the province of New Mexico, who had the right and power under the law to determine such questions, that the land occupied by the Indians of the pueblo of Cuyamungue when abandoned by them became royal public domain, and as such granted it to the petitioners in 1731.

The grant should be confirmed to the extent of the boundaries set out in the act of possession, unless the court is prohibited by the terms of the act of March 3rd, 1891, from giving the petitioners what they are clearly entitled to under the law and facts of this case.

The court will not construe an act of the legislative department of the Government so as to confiscate the private property of the citizens if such a construction can be avoided. The parts of said act necessary to be considered in this case are the following:

“SEC. 7. That all proceedings subsequent to the filing of said petition shall be conducted as nearly as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified
135 by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title, and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord 1848, or the treaty concluded between the same powers at the City

of Mexico, on the 30th day of December, in the year of our Lord 1853, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or the parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the court shall in its decree specify plainly the location, boundaries, and the area of the land the claim to which is so confirmed.

"SEC. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government, that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases of confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location, and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

"If in any such case a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such lands that shall have been disposed of by the United States (and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely or the holder of any such claim or title). And no further confirmation of claims or titles in this section mentioned shall have any affect other or further than as a release of all claim of title by the United States; and no private right of any person, as between himself and other claimants or persons in respect of any such lands, shall be in any manner affected thereby.

* * * * *

"SEC. 13. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

"First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that, if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.

"Second. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.

* * * * *

136 "Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority.

"Fifth. No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be preserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such land.

"Sixth. No confirmation of or decree concerning any claim under this act shall in any manner operate to have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims, or lands, or their disposition, otherwise than as in this act provided.

* * * * *

"SEC. 14. That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid notwithstanding such decree, and upon proof being made to the satisfaction of said court of such sale or grant and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of betterments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment, when found, shall be a charge on the Treasury of the United States. Either party deeming himself aggrieved by such judgment may appeal in the same manner as provided herein in cases of confirmation of a Spanish or Mexican grant. For the purpose of ascertaining the value and amount of such lands surveys may be ordered by the court, and proof taken before the court, or by a commissioner appointed for that purpose by the court."

It is quite clear that the confirmation of this grant would not "interfere with or overthrow any just and unextinguished Indian title or right to any land or place." It would hardly be insisted under the facts in this case that the pueblos of Nambe and Pojoaque had any just right or claim at the date of the treaty of Guadalupe Hidalgo to any part of the land covered by this grant. It is equally clear that the United States did not acquire any right or interest in the land of the citizen in the ceded territory held by a complete and perfect title at the date of said treaty.

The confirmation of this grant would not be a claim allowed "for land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority," for the reason that Congress did

137 not undertake to decide who was the rightful owner of the land confirmed to the pueblos of Nambe and Pojoaque, but on the contrary it is expressly stated in the patents issued to them that it is not to interfere with any prior right to the land which may be held by other parties. The action of Congress on the claims and the issuance of the

patents thereunder is nothing more than a release to them of whatever interest the United States might have in the land. In this case we have shown that the United States had no interest in the land to release. A confirmation of the grant to the extent of the boundaries would not in any way affect the rights of the pueblos under their patents (if they had any) as against the petitioners; they are fully protected by subdivision 5 of section 13 of the act of March 3rd, 1891.

This view of the case is not in conflict with the doctrine laid down by the Supreme Court of the United States in the case of *Tomeling vs. U. S. Freehold*, etc. (93 U. S., p. 644). In that case a suit was commenced in the Territory of Colorado against Tomeling to recover 160 acres of land within the outboundaries of a larger tract of land which had been confirmed by Congress. The case was submitted on an agreed statement of facts, from which it appears that the land claimed in the plaintiff's declaration was within the exterior boundaries of what is known as the Sangre de Chista grant, which had been confirmed to Charles Beaubien. The plaintiff claimed title in fee simple by conveyance from one Martin Coats Fisher to him. Without reciting all the facts in the case, it is sufficient to say the question decided in the case is that Congress had power and authority to confirm Spanish and Mexican grants under the act of July 22, 1854, and that such action by Congress was final and binding on the courts. It is stated by the learned judge *you* delivered the opinion of the court that "the confirmation being absolute and unconditional, without limitation as to quantity, we must regard it as affectual and operative for the entire tract." But the controlling point decided is that there was no jurisdiction whatever conferred on the courts by the act of July 22, 1854. The powers conferred on the commissioners and courts over claims under Spanish and Mexican grants by the act of March 3, 1851, is discussed by the court, and the difference between that act and the act of 1854 as to the power of the courts clearly defined. It is again announced as the settled doctrine of that court that an act of Congress confirming a grant passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and a grant may be made by law as well as by patent pursuant to law.

It will be observed that the 7th section of the act creating this court gives it "full power and authority to hear and determine all questions arising in cases before it relative to the title to the land" and makes it the duty of the court, by final decree, to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication. If the petitioners in this case have a complete and perfect title to the land in question under the grant of 1731, it necessarily follows that the pueblos of Nambe and Pojoaque have no right or title to any of the land within the boundaries of such complete and perfect grant. But the decree of this court does not in any way affect the right or title (if any) that the pueblos acquired by their patents from the United States, as between them and the petitioners. All adverse claimants are made parties, not that their rights as against the petitioners are to be affected by any adjudication of the court as to the title of the land in controversy, but to the end that a final decree may be entered by

the court which will bind all claimants of the land, the subject of the suit, so far as the United States is concerned. It is true that it is well settled, a confirmation by Congress of a grant of land passes the title of the United States in the land covered by the grant, but it is
 139 equally well settled by the Supreme Court of the United States that a patent issued by the United States to land which it did not own is void. (Martin vs. Nebraska, 21 Wall., p. 660; Polk vs. Wendell, 9 Cranch, p. 99; Id., 5 Wheaton, p. 301; Patterson vs. Moore, 11 Wheat., p. 383-4; Minter vs. Crometin, 18 Howard, p. 88; Reichart vs. Phelps, 6 Wall., 165; Minn vs. Brooks, 8 Howard, 232-3; Sabariego vs. Mav-
 erick, 124 U. S., p. 282-3; Wright vs. Roseberry, 121 U. S., 520.)

In a recent case this doctrine has been applied to documents executed by Mexican governmental officials. The rule laid down by the Supreme Court of the United States is as follows: "All that can be reasonably or lawfully claimed as the effect of such documents of title is that they pass such estate and such estate only as the Government itself, in whose name and on whose behalf the official acts appear to have been done, had at that time, but not to conclude the fact that the estate conveyed was lawfully vested in the grantor at the time of the grant." (Sabariego vs. Mavarick, supra.) The court having found that the petitioners' grant was complete and perfect at the date of the treaty in 1848, the only remaining question is as to whether or not the court can pronounce a decree in accordance with the law and facts found by it, which will enable the petitioners in a suit against them in the local courts by the pueblos of Nambe and Pojoaque on their patents, to rely on the decree of this court confirming their grant to the extent of the boundaries.

In the act of Congress confirming the grants to the pueblos, it is provided: "That this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights should such exist." In the case of United States vs. Joseph (94 U. S., p. 619), Mr. Justice Miller, speaking for the court, said: "It is unnecessary to waste words to prove that
 140 this was a recognition of the title previously held by these people and disclaimer by the Government of any right of present or future interference, except such as would be exercised in the case of a person holding a complete and perfect title in his individual right." So, in the opinion of that court, it is the duty of the Government to recognize and protect complete and perfect titles held by persons in their individual right, notwithstanding the fact that the land covered by such titles may have been confirmed by Congress to other parties and patent issued for the same. It will be observed that section 8 makes it the duty of the court to confirm complete and perfect grants, and to locate the boundaries of the same, but provides that such confirmation "shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States." We do not see how the court could confirm a grant for more than the grant was found to cover, nor do we see how the court can except out of the decree of confirmation land that is covered by such grant, without violating other parts of the section, as well as subdivision 5 of section 13, which prohibits the court in any case from pro-

nouncing a decree that will conclude or even affect the private rights of persons as between each other, "all of which rights shall be preserved and saved to the same effect as if this act had not been passed." Section 13 provides that "all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions, as well as to the other provisions of this act." So that section 8 must be construed with subdivision 5 of section 13, which, as before stated, clearly prohibits the court from pronouncing a decree which shall affect the private rights of persons as between each other.

It seems to us quite clear that to except out of a decree of confirmation in this case the land within the boundaries of the grant which is covered by the patents of the pueblos of Nambe and Pojoaque would affect materially the rights of the petitioners to the land so excluded, as between
 141 them and the pueblos, and the rights of the petitioners would not be saved to the same effect as if the act had not been passed. The United States has no interest whatever in the land in controversy further than to protect the property rights of the petitioners as provided for in the Treaty of Guadalupe Hidalgo, the Constitution of the United States, and the law of nations. It is the duty of the court, in suits brought under section 8, "to hear, try, and determine the validity of the grant and the right of the claimant thereto, its extent, location, and boundaries, in the same manner and with the same powers as in other cases in this act mentioned." So the court must look to section 7 for the law by which it must be governed as well as its powers to adjudicate all questions which may arise in the case relative to the title to the land, the subject of such case, etc. And, as before stated, the court is compelled to make a final decree which shall settle and determine the validity of the title and boundaries of the grant according to the laws enumerated in said section. This it is quite impossible for the court to do unless it has power to pronounce a decree in accordance with the facts found from the evidence and applied to the law by which the court must be governed. This court held at a former term that the provisions of section 14 allowing compensation in certain cases did not apply where the land claimed in this court under a title from Spain or Mexico had been patented by the United States to another claimant under a Spanish or Mexican grant. That such action by the Government did not amount to a sale or grant by the United States within the meaning of said section. To exclude the land granted to the petitioners in this case covered by the patents of the pueblos would amount to a confiscation of the land so excluded.

A decree confirming the grant as a complete and perfect one to the extent of the boundaries called for in the grant will be entered in this case. When this is done, the manifest intention of Congress will
 142 be carried out, and the rights of the pueblos (if any) will not in any way be affected. The question of the validity of their title under their patents and the validity of the petitioners' title under a decree of confirmation by this court can be determined as between the parties themselves by the local tribunals in a proper proceeding instituted for that purpose.

W. W. MURRAY, *Associate Justice.*

SANTA FE, NEW MEXICO, October, 1895.

143 And be it further remembered that, to wit, on said 24th day of October, A. D. 1896, the dissenting opinion of Mr. Justice Sluss in said cause was filed in the office of the clerk, which said dissenting opinion is in the words and figures following, to wit:

144 In the Court of Private Land Claims, district of New Mexico.

MARIA DE LA PAZ VELDEZ DE CONWAY ET AL., PETITIONERS, }
 vs.
 THE UNITED STATES, DEFENDANT. }

The controverted question in this case is, Should there be excepted from the decree of confirmation that part of the land covered by the grant falling within the lines of the land patented to the Indian pueblos of Pojoaque and Nambe?

The claims of the lands of these several pueblos were confirmed by an act of Congress, entitled "An act to confirm the land claim of certain pueblos and towns in the Territory of New Mexico," approved December 22, 1858 (11 Stats. at Large, page 374).

The provisions of the act were that the several claims were confirmed as reported on favorably by the surveyor-general of New Mexico; that the claims should be surveyed as recommended for confirmation by said surveyor-general, and that a patent should issue therefor.

The claims made by each of the pueblos was for four square leagues of land, having the church as a center. The claim so made were approved and recommended for confirmation by the surveyor-general, and four square leagues was surveyed and patented to each of the pueblos. The lands so survey'd and patented to the pueblos cover the greater part of the land claimed under their grant by the plaintiffs in this case.

The corrections of the surveyed and patented boundaries of the four square leagues of each pueblo is not questioned. The only question being whether the decree of confirmation of plaintiffs' claim should be for all the land within the boundaries described in the grant, or for only so much as remains after excepting the patented pueblo lands.

145 The plaintiffs presents their claim for confirmation under the provisions of the 8th section of the act of Congress creating this court, claiming that the title under their grant had become complete and perfect at the time of the cession of this territory to the United States, and this court is un'animously of the opinion that the grant title was complete and perfect as claimed by plaintiffs.

There are several provisions of the act of Congress creating this court which seem to render it imperative that these patented pueblo lands be excepted from the decree of confirmation.

The first is the second subdivision of section 13, which reads: "No claim shall be allowed that shall interfere with or overth'ow any just and unextinguished Indian title or right to any land or place."

This language is very comprehensive and seems to be quite free from doubt as to its meaning. If the claim presented interferes with such an Indian title, it can not be allowed. Interference does not mean destruction. It simply means a claim that comes in opposition to, or that clashes with, or covers the same ground. Unquestionably the claim of

the plaintiffs in this case, as to that part of the land included in the patents to the pueblos, is in opposition to, and clashes with, and covers the same ground—in a word, interferes with the Indian title to the same land. There is no escape from the plain English of it. Are these Indian titles just and unextinguished, within the meaning of this provision of the act of Congress? How is that question to be determined? It is seen that the Indians presented their claim of title to the surveyor-general of the Territory in pursuance of law. That the surveyor-general investigated their claim and approved them, and recommended their confirmation to the Indians by Congress. That Congress, in pursuance

of this investigation and recommendation of the surveyor-general and acting upon it, confirmed these lands to the Indians according to the claims they made for them. In the Astiazaran Case (148 U. S., 80) it is established that this investigation, approval, and confirmation constitutes a proceeding in a tribunal having exclusive jurisdiction to determine the status of the land. And in the Tameling Case (93 U. S., 644) it is established that in such proceeding confirmation by Congress operates as an adjudication of the rights of the parties conclusive and binding upon all the Departments of the Government and that the courts can not review or question the correctness of the decision. Tried by the doctrine of the cases cited, it is apparent that the confirmation by Congress of these pueblo lands operates as an adjudication, so far as the United States is concerned; that the Indian title to these lands is just and unextinguished, and that the boundaries are as claimed by the Indians, and as such adjudication is conclusive upon this court, and that we can not set in review upon the question. It results therefore that we are compelled to hold that the claim presented by the plaintiffs does interfere with a just and unextinguished Indian title.

The second provision of the act of Congress to which attention is directed is the fourth subdivision of section 13, which reads: "No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority."

Under this provision, if the right to the land has been acted upon and decided by Congress, we can not allow any claim to that land. The words "right to which" evidently referred to the antecedent "and land," and not to the word "claim." This court does not adjudicate the right to the claim, but does adjudicate the right to the land as against the United States. If this right to the land has once been adjudicated against

the United States, there would certainly be neither object nor reason to provide a tribunal to adjudicate the same thing a second time, and no reason for permitting the time of the tribunals of the United States to be occupied in adjudicating the same thing a second time. The object of the provision was a proper one, and in harmony with the specific and repeated declaration of this act that the rights of third persons to the land should not be affected by the confirmation of any claim to it, and in harmony with the invariable practice of Congress to incorporate in its acts of confirmation the provision that the rights of third persons in the land were not affected by the confirmation. But aside from any speculation as to the policy of Congress in the matter, the fair and plain interpretation of provision under consideration is that where any tract of land

has been by Congress confirmed to any claimant, this court will not confirm the same land to any other claimant; that after the Government has ceased to be possessed of or interested in the title, this court is not to be made use of to investigate and express an opinion upon the validity of every claim which may be outstanding against the property emanating from Spanish or Mexican authority.

The third provision of the act of Congress to which attention is directed is found in section 8, and reads: "If in any case the title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States."

Under this provision it is clear that if any part of the land claimed in this case has been disposed of by the United States, such part must be excepted from the decree of confirmation. This proposition is not open to question. The only question which can be raised is as to what is meant by the expression "disposed of by the United States." It seems that this expression must be construed according to its ordinary and usual acceptation. There is nothing in the act to justify the conclusion that it was used in any narrow or technical sense, or as having reference to any particular method of disposition. This clause of the act certainly has reference to excepting from the confirmation land the title to which has been disposed of by the United States. We can entertain no other conception of the United States disposing of land than as disposing of the title to the land. To dispose of the thing is to part with it. To dispose of land is to part with it, and to part with land is simply to part with the title to it. When a man parts with whatever title he may have to land, he has disposed of it to the full extent of his ability to do so. A man may part with his title to the land either by a sale and conveyance of it as of an absolute fee, or by a simple quit claim or release of any claim he may have to it. In either case the land is effectually disposed of as *far* as he can do so. And so it is with the United States. It can dispose of its title to land either by a sale or grant, whereby it undertakes to confer upon the grantee and indefeasible estate in fee, or by a simple quit claim or release, and surrender of all its title and claim to the land. In either event the Government parts with its title, and the land is disposed of so far as the United States is concerned.

The language used in the clause of the statute under consideration comprehends both these methods of disposition. The effect of acts of Congress confirming Spanish and Mexican land claims has been passed upon in numerous cases by the Supreme Court. In the cases of *Ryan vs. Carter* (93 U. S., 78) and the *Tameling Case* (93 U. S., 644), and the *Maxwell Grant Case* (121 U. S., 325), the doctrine is established that a confirmation of one of these grants by act of Congress has the same operation and effect in the way of passing title as a grant *de novo* made by act of Congress, and that a grant of land may be made by law, as well as by a patent pursuant to a law. In the *Ryan Case*

149 (93 U. S., page 82) it is said: "Repeated decisions of this court have declared that such a statute passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and that a grant may be made by law as well as by patent pursuant to a law." This same language is reiterated in the *Tameling Case* (93 U. S., at

page 663), and the same principle was applied in the Maxwell Grant Case.

From these decisions the inference is unavoidable that as a disposition of the land an act of Congress confirming Spanish land claims stands upon the same footing and is to be considered in the same light as an act making an independent grant *de novo*.

Now, if Congress had passed an act making in terms an out-and-out grant of this particular tract of land to the Indian of Pojoaque, we would be compelled to say that that particular tract of land had been disposed of by the United States. Under the logic of the decisions cited how can we say anything else as to the effect of the act of Congress confirming these several Indian pueblo claims?

The conclusion is clear that this case is precisely within the provision of section 8, above quoted.

It is contended that the construction above given to the act of Congress should not be adopted, for the reason that if the part of the land covered by the Indian titles is excepted from the decree of confirmation the plaintiffs will be deprived of the right to assert the superiority of their right to the land as against the Indians in the courts of ordinary jurisdiction, and therefore the necessity of protecting the rights of all parties claiming interests in the land compels the adoption of a different construction.

It is seen that the act of Congress confirming the lands to the Indian pueblos contained the provision "that this confirmation shall only
150 be construed as a relinquishment of all title and claim of the United States to any part of said lands, and shall not affect any adverse valid rights should such exist."

This reservation is not made in favor of such rights only as should be passed on and approved under authority of the United States, but is a reservation in favor of any valid right of property in the land confirmed which existed at the time of the treaty of cession.

Prior to the act of Congress confirming the lands to the Indians, no adverse rights to the lands could be asserted in courts of ordinary jurisdiction, although such rights existed and were valid. The reason for this was that the land—the *res*—which was to be the subject of judicial action was within the exclusive jurisdiction of the political department of the Government of the United States. Being within that jurisdiction, the *res* was wholly withdrawn from the jurisdiction of the ordinary courts. The courts might have had jurisdiction of the parties to be affected, but not having jurisdiction of the *res*, no judgment could be given which would affect the status or title.

By the act of confirmation, however, the *res* passed out from the exclusive jurisdiction of the political department of the Government and within the jurisdiction of the courts. And the moment the land came within the jurisdiction of the courts, every right and interest in the land, of whatever nature and from what source so ever arising, could be asserted in the courts in appropriate proceedings.

In the cases of *Hallet vs. Collins* (10 Howard, 174) and *Meader vs. Norton* (11 Wall., 442) it is established that when a grant has been confirmed in the name of one person, and another has a better title to the land confirmed than the confirmee, such owner of the better title may assert his rights to the land in a court of equity and hold the confirmee

as trustee of the legal title to his benefit and compel a conveyance.

151 The plaintiffs in this case claim, and are shown to have, a title which was complete and perfect at the time of the treaty of cession and which requires no confirmation. There would seem to be no doubt that if the plaintiffs' title is paramount and superior to that of the Indians to the lands in question, it can be asserted against the Indians in the courts of ordinary jurisdiction without any confirmation by this court. The decree in this case should show that the court finds the grant set up by plaintiff to be genuine, to have become complete and perfect, and entitled to confirmation; that a part of the land within the boundaries of the grant has been by an act of Congress confirmed to the Indian pueblos, and for that reason are excepted from the decree of confirmation. This is as far as this court can go under the plain language of the act of Congress creating it.

HENRY C. SLUSS,
Associate Justice.

SANTA FE, NEW MEXICO, *October 24th, 1895.*

I concur in the conclusion reached in the foregoing opinion, and in the reasoning by which that conclusion is reached, except that I do not concur in the reasoning as to the proper construction of the provision of section 8 of the act of Congress creating this court.

THOMAS C. FULLER,
Associate Justice.

152 And be it further remembered that t'ereafter, to wit, on the 9th day of November, A. D. 1895, a motion to vacate the decree of confirmation in said cause was filed in the office of the clerk, which said motion is in the words and figures following, to wit:

153 In the Court of Private Land Claims.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL. }
versus } No. 112.
THE UNITED STATES.

Now come the pueblo of Nambe and the pueblo of Pojoaque, by John L. Bullis, agent of the United States for the Pueblo Indians, and show to the court here that the lands claimed by said petitioner in the above-entitled cause, and which have been confirmed by the decree of this court to said petitioners, are almost entirely within the limits of the lands confirmed by act of Congress to said pueblos of Nambe and Pojoaque and patented to them by the United States.

The said pueblos further show to the court that while they were made parties defendant to said petition they were never served with process therein and had no opportunity to appear and make defense to the said claim of said petitioners.

The said pueblos therefore move the court to vacate the decree of confirmation heretofore entered in this cause by this court and to allow them an opportunity to be heard herein in opposition to the said claim.

THE PUEBLO OF POJOAQUE and
THE PUEBLO OF NAMBE.

By JOHN L. BULLIS,
Captain 24th Infantry, Acting Indian Agent.

154 And afterwards, to wit, at a stated term of the Court of Private Land Claims, begun and held at Santa Fe on the third day of March, A. D. 1896, and on the second day of said term, the same being the third day of March, 1896, the following, among other proceedings, were had, to wit:

MARIA DE LA PAZ VALDEX DE CONWAY ET AL. }
 vs. }
 THE UNITED STATES ET AL. }

In the above-entitled cause the motion of the Indians of the pueblos of Nambe and Pohuaque to vacate the de'ree of confirmation heretofore entered in this cause and to allow them an opportunity to be heard, was set for argument on Saturday, the fifteenth inst.

155 And afterwards, to wit, at a stated term of the Court of Private Land Claims, begun and held at Santa Fe on the ninth day of November, 1896, and on the nineteenth day of said term, the same being the second day of December, A. D. 1896, the following, among other proceedings, were had, to wit:

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL. } "Cuyamungue
 vs. } grant."
 UNITED STATES ET AL. }

The motion of the pueblos of Nambe and Pohuaque to vacate the decree of confirmation heretofore entered in the above-entitled cause, filed November ninth, 1895, now coming on to be heard and being submitted to the court, the court being now sufficiently advised in the premises, doth overrule and deny said motion.

It is therefore ordered by the court that the said motion of the petitioners to vacate the decree of confirmation in this cause be, and the same hereby is, denied.

156 And be it further remembered, that thereafter, to wit, on the sixth day of January, A. D. 1897, an appeal and allowance were filed in the office of the clerk, which said appeal and allowance are in the words and figures following, to wit:

157 *Appeal and allowance.*

UNITED STATES OF AMERICA, ss:

Court of Private Land Claims, Santa Fe district.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL., }
 plaintiffs and appellees, } No. 112.
 vs. } Cuyamungue grant.
 THE UNITED STATES, DEFENDANT AND APPELLANT. }

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the twenty-four day of October, 1895, in the above-entitled proceeding, doth hereby appeal from said decree to

the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

The said defendant shows to the court here that the statement by the United States attorney to the Attorney-General required by sec. 9 of the act of Congress establishing this court, approved March 3, 1891, was not made in said cause within sixty days after the rendition of judgment therein, but was made on December 22, 1896.

MATT. G. REYNOLDS,
U. S. Attorney for Defendant and Appellant.

And now, to wit, on January 4th, 1897, it appearing to the satisfaction of the court that the statement required to be made by the U. S. attorney to the Attorney-General by sec. 9 of the act of Congress establishing this court was not made within sixty days after the rendition of the judgment therein, but was made on, to wit, the twenty-second day of December, 1896, it is ordered that an appeal be, and hereby is, now allowed as prayed for.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

158 And be it further remembered that thereafter, to wit, on the 22nd day of January, A. D. 1897, a citation was filed in the office of the clerk, which said citation is in the words and figures following, to wit:

159 *Citation on appeal to Supreme Court.*

UNITED STATES OF AMERICA, ss:

The President of the United States, to Maria de la Paz Valdez de Conway and others, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, to wit: Sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourth day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

On this day of 189 , personally appeared before me the subscriber, and makes oath that he delivered a true copy of the above citation to .

Subscribed and sworn to before me this day of , 189 .

I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees this 8th day of January, 1897, but I do not waive any ground of objection to the time or validity of the said appeal.

JNO. H. KNAEBEL,
Attorney for Plaintiffs.

(Indorsed :) Citation filed Jan. 22, 1897. James H. Reeder, clerk.
By Ireneo L. Chaves, dep'ty.

160 UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing is a full, true, and correct transcript of all the papers filed and the proceedings had in said court in the case entitled Maria de la Paz Valdez de Conway et al. vs. United States, No. 112.

Given under my hand and the seal of said court, at Santa Fe, Territory of New Mexico, this 26th day of March, A. D. 1897.

[SEAL.]

JAMES H. REEDER, *Clerk.*
By IRENEO L. CHAVES, *Deputy.*

(Indorsed on cover :) Case No. 16546. Term No. 343. The United States, appellant, vs. Maria de la Paz Valdez de Conway et al. Court of Private Land Claims. Filed March 31st, 1897. Supreme Court U. S. Clerk's office. Received Mar. 31, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,	}	No. 86.
<i>v.</i>		
MARIA DE LA PAZ VALDEZ DE CONWAY et al.		

CUYAMUNGUE GRANT IN NEW MEXICO.

**APPEAL FROM THE COURT OF PRIVATE LAND
CLAIMS.**

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

On February 21, 1893, Maria de la Paz Valdez de Conway and twenty-one others filed a petition in the Court of Private Land Claims for the confirmation of that certain tract of land known as the Cuyamungue grant

or private land claim situate in the county of Santa Fe, Territory of New Mexico, and alleged to contain in excess of 5,000 acres.

In this petition it was alleged (R., 1-4) that on January 2, 1731, Bernardino de Sena, Tomas de Sena, and Luiz Lopez petitioned Governor Juan Domingo de Bustamante to grant them the surplus land in the abandoned pueblo of Cuyamungue, they having registered it, and describing it as being situate on both sides of the river Tesuque (formerly Cuyamungue), and extending from the bluff of the pueblo of Cuyamungue to the hills of the Nambé road.

That on the same day the said governor made the grant as prayed for, and directed the chief alcalde of the new village of Santa Cruz to notify the adjoining owners and all citizens in the immediate vicinity to show cause, if any they had, why the said tract should not be granted to the petitioners, and having summoned them as directed, and no objection being urged, the said alcalde did, on January 22, 1731, place the petitioners in juridical possession of the lands asked for, describing the boundaries, and after executing his act of juridical possession on the foot of the decree of the governor, returned the same to him, by whom the proceedings were fully approved and placed in the royal archives in the city of Santa Fe, a *testimonio* thereof being delivered to the said grantees, the said original granting decree and act of juridical possession being a part of the archives of the United States now in the custody of the surveyor-general for the Territory of New Mexico.

That the said private land claim was examined, approved, and partially surveyed by said surveyor-general, and by him recommended to Congress for confirmation, but Congress has not confirmed the same.

That the petitioners claim the said tract in severalty and as tenants in common, either by purchase or inheritance from the said original grantees, and that the said grantees and their legal representatives, ever since the making of said grant down to the present time, have been in the exclusive, peaceable, open, uninterrupted, notorious, and rightful possession and enjoyment of said tract, and that no other persons claim the same otherwise than by lease or permission of the petitioners.

After alleging that the grant was complete and perfect at the time of the cession of New Mexico to the United States, the petition closed with other formal allegations and a prayer for confirmation of the grant.

The record discloses no answer on behalf of the United States, although an answer putting in issue generally the allegations of the petition was filed. However this may be, the court was bound to and did consider the case, under the provisions of the third paragraph of section 6 of the act creating the Court of Private Land Claims (26 Stat. L., 854), irrespective of any issue being made up by the filing of an answer on behalf of the Government.

The trial of the cause was had on October 14, 1895 (R., 6), and the plaintiff produced the witnesses Juan Cristobal Romero (R., 7-9 and 11-12) and John Conway (R., 10), her husband; testifying also in her own behalf (R., 10-11). This testimony was to the effect that certain portions of the land claimed had been occupied and

cultivated by persons claiming under the original grantees. The plaintiff offered in evidence the original title papers, consisting of the petition for the grant, the order of the governor making the grant, and the act of the alcalde giving juridical possession (R., 13-17), the genuineness of which documents the United States did not question; also the opinion of the surveyor-general recommending the grant for confirmation (R., 19-20), and the testimony of the witnesses examined before him on this investigation (R., 17-19), describing the boundaries of the grant, and stating that it was and is occupied by parties claiming under the original grantees.

In lieu of numerous mesne conveyances the plaintiff, with the consent of the Government, introduced an abstract of title (R., 12), which, however, appears to have been omitted from the record. This omission, however, is immaterial, as the Government admits that the claimants have shown sufficient interest in the grant to invoke the jurisdiction of the court.

The Government showed that Indians of the pueblos of Nambé and Pojoaque had many years ago instituted proceedings before the surveyor-general of New Mexico under the act of July 22, 1854, for 4 leagues of land each; that the surveyor-general had recommended that the land thus asked for be granted to them, and Congress confirmed a grant to each of said pueblos for 4 square leagues, as recommended (11 Stat. L., p. 374); that the grants to said pueblos were surveyed and patents for them issued, and that the surveys as made cover the larger portion of the land of the old pueblo of Cuya-

munge, which petitioners allege was granted to the original grantees in this case.

The Government introduced in evidence the proceedings had before the surveyor-general in each of these pueblo grants (R., 68-69), the official plats from his office showing the location of the Nambé and Pojoaque grants (R., 20-21), and archives Nos. 882 and 1342 (R., 21-68). These latter archives show the settlement of the Indians in these pueblos, and other orders, to the effect that the Indians be secure in their possession of the lands, and free from molestation and interference in their enjoyment of the same.

It thus fully appears that the larger portion of the land claimed was held and possessed by the Indian pueblos of Pojoaque and Nambé adversely to the plaintiffs and under patents from the United States issued upon Congressional confirmations, under grants from the King of Spain, possibly much older than the title presented (1731). (*See testimony of officials of Pojoaque and Nambé, R., 68-69.*)

However this may be, it does appear that the allegation in the petition (R., 4) that "No person or persons, natural or artificial, are in possession of the said land or any part thereof, or claim the same or any part thereof adversely to your petitioners, or otherwise than by their lease or permission," was not well founded in fact.

It was made to appear on the trial that the Indian pueblos of Pojoaque and Nambé were in possession of and claiming the larger portion under patents from the United States, and otherwise than by the lease or permission of the petitioners (plaintiffs), and that these

adverse claimants, interested in preventing the claim from being established, had not, nor have they to this time, been served with a copy of the petition, as required by the third paragraph of section 6.

To meet the objection raised by the Government that the Indian pueblos of Pojoaque and Nambé were necessary parties to the record, in order that the scheme of the entire act might be made to operate harmoniously and fulfill the express requirements of Congress, that in one action its entire obligations in respect of any particular tract or parcel of land might be forever settled, by providing that "the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands" (sec. 13, subdiv. 5), the court, five days after the trial of the case, without the Indians being represented or having their day in court, on October 19, 1895, with the consent of the parties to the record, ordered that the pueblo of Pojoaque and the pueblo of Nambé be made parties, and that the petition of claimants be deemed amended accordingly (R., 70).

No copy of the petition or amended petition was served upon these pueblos, nor did they appear and waive the service, but the court, on the 24th day of October, 1895, entered a decree against the United States, confirming the entire grant as complete and perfect at the date of the treaty (R., 70-71), but sought to avoid, as the opinions fully disclose, the limitations specifically placed upon its jurisdiction by the second paragraph of section 7, and practically ignoring the principles

announced for its guidance in the sections [6] as to parties [§ 13, subdiv. 5], as to conclusive effect, and [14] as to compensation, where the United States had, through misapprehension or mistake, wrongfully sold or granted the land, or any portion, to some other person, which wrongful disposition to such other person shall remain valid notwithstanding the decree.

On the 9th day of November, 1895, the pueblos of Pojoaque and Nambé, by Capt. John L. Bullis, agent of the United States for the Pueblo Indians, filed a motion in their behalf, stating that the lands claimed by the petitioner, and which were confirmed by the court, were almost entirely within the limits of the lands confirmed by act of Congress to the said pueblos and patented to them by the United States. That, although they were made parties defendant to said petition, they were never served with process and had no opportunity to appear and make defense, and asked the court to vacate the decree and allow them to be heard in opposition to the claim (R., 84). This motion was filed on November 9, 1895. It was, on March 3, 1896, set for argument on the 15th (R., 85), and was not finally disposed of until the 2d day of December, 1896, when it was denied (R., 85).

During the pendency of this motion no report was made by the attorney for the United States, but upon its denial report was promptly submitted; and, at the request of the Indian agent, as well as for its own protection, an appeal was directed by the Attorney-General and duly prayed and allowed, citation was signed, served, and filed with the clerk on January 22, 1897 (R., 85-87).

ARGUMENT.

After careful investigation, counsel on behalf of the Government has been unable to find a single act of Congress, or a single decision of this court under any of the various acts looking to the settlement and adjustment of private land claims, which authorized or permitted the plastering of one confirmation, of whatever kind, upon another for the same land, either by Congress itself or by any tribunal or commission deriving its functions and powers therefrom. If the confirmation in this case is permitted to stand, a large portion of the land having been previously confirmed to the Indians under a special act of Congress, which recognized a Spanish title, there exists a double confirmation of a large portion of the same land, one by Congress itself and the other by a tribunal which looks to Congress as the source of its being, authority, and power.

The avoidance of just such an unhappy outcome is believed to have been one of the main purposes and intents of Congress when it enacted the present act, as well as in its previous private land-claim legislation. It will be the purpose of the Government to attempt a demonstration that the consummation of this evident purpose of Congress is neither impossible nor difficult under the provisions of the act of 1891.

SEC. 13. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

* * * * *

Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority. Act of March 3, 1891 (26 Stat. L., 854).

I.

THE PRACTICE, PROCEDURE, AND PRINCIPLES OF DECISION ARE REQUIRED TO BE THE SAME IN ALL CASES PRESENTED TO THE COURT OF PRIVATE LAND CLAIMS UNDER THE ACT OF MARCH 3, 1891. (26 STAT. L., 854.)

It was contended by the United States, the only party before the court, that if it should hold the grant to be perfect the land covered by the patents to the Indian pueblos of Pojoaque and Nambé should be specifically ascertained and as specifically excepted, as "such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States." (Sec. 8, act 1891.)

Aside from the *California act of 1851* (9 Stat. L., 631), the act of 1891 is the only instance where Congress has committed to the judicial branch of the Government any jurisdiction over complete and perfect titles to private land claims.

The *act of 1824* (4 Stat. L., 52) is evidently the particular act in *pari materia* with and from which Congress adopted the form and phraseology of the present law, and a careful comparison of the two is important at this stage of the litigation, as well as a consideration of the numerous decisions of this court under the same.

It was made to appear to the court that the Indians were in possession of the larger portion of the land and claimed adversely to the petitioners, and, under the sixth and seventh sections of the act (26 Stat. L., 854), were necessary parties defendant. Also that the decree could not be "conclusive of all rights as between the United States and all persons claiming any interest or right in such lands" unless all such persons were before the court by process or voluntary appearance. Five days after the hearing of the cause, the court ordered the Indian pueblos of Pojoaque and Nambé made parties (R., 70), and then proceeded to enter the decree covering their lands without giving them an opportunity to be heard upon any question of law or fact in the case.

The opinion of the majority of the court (R., 72) goes into and decides the question of the Indian title, without their presence or the affording them an opportunity to be heard, and holds the title of Sena and the others associated with him to be the better title, when it may at least be doubted, upon a full and complete hearing, with all adverse claimants in court, whether the Sena title to a large portion of the land can be sustained at all as the better Spanish title to the land which is the subject of this case. The officials of the pueblo of Pojoaque, before the surveyor-general, on June 28, 1856, testified as follows (R., 68):

Question. Have you any tradition of the length of time the pueblo has been in existence?

Answer. The bell of the church bears date of 1710. The bell was cast for the church.

Question. Has the pueblo been occupied continuously from that date up to the present time by your people?

Answer. It has been so occupied.

This testimony raises the question whether the title of the pueblo of Pojoaque was not better than that confirmed by the court to the Senas ; it certainly was much older and was the only one recognized by the political branch of the Government when it confirmed and patented the land to the pueblo, by special act of Congress, under the report of the surveyor-general. The same is true as to pueblo of Nambé. (R., 69).

This testimony was introduced by the Government for the purpose of establishing a foundation for the contention, in case a confirmation should be given the petitioners, and afterwards raised, that the rights of adverse possessors and claimants, not parties to the suit, could not be decreed by the court to be subordinate to those of the petitioners, and that the decree should specifically except from its operation all lands theretofore disposed of by the United States to other persons, whether rightfully or wrongfully.

I.

THE CLAIMANTS OF THE PERFECT TITLE TO THE
CUYAMUNGUE LANDS, UNDER SENA AND OTHERS,
BY AVAILING THEMSELVES OF THE PERMISSIVE
RIGHT TO SUE THE UNITED STATES, DID SO CUM
ONERE.

If they had desired to avoid any of the supposedly harsh terms imposed, it was indeed unwise to seek a

qualified and conditional jurisdiction. They should have stood on their title, retaining the right to challenge the grantees of the United States, or, if coerced by them, to successfully defend their perfect rights.

It is insisted that by the act of 1891 Congress intended, and clearly so provided, that when a suit should be filed by anyone claiming lands within the territory ceded to the United States by the treaties of Guadalupe Hidalgo (1848) or the Gadsden Purchase (1853), by virtue of *any* Spanish or Mexican grant (*perfect* or *imperfect*), concession, warrant, or order of survey, and by which suit it is sought to establish an obligation on the part of the United States to recognize and to give full force to the same, under the laws thereof, certain requirements are imposed in the procedure before a decree can be lawfully entered, viz (see also *in pari materia*, sec. 1, act of 1824):

First. The petition should set forth fully the nature of the claim to the land.

Second. Particularly state the date and form of the grant, concession, warrant, or order of survey under which it is claimed.

Third. By whom made.

Fourth. The name or names of any person or persons in possession of or claiming the same or any part thereof otherwise than by the lease or permission of the petitioner.

Fifth. The quantity of the land claimed and the boundaries thereof and where situate, and a map showing the same as near as may be.

Sixth. Whether the same has been confirmed, considered, or acted upon by Congress or the authorities of the United States, or has been submitted to any authorities constituted by law for its adjustment, and, if so, what action has been taken thereon, if any.

Such are the requirements of procedure in order that the court can determine whether it is proper to assume jurisdiction of the subject-matter. If the allegations are sufficient to show on the face of the petition that the claim is one over which it is required to take jurisdiction, the case may proceed, provided the necessary parties are before the court by process or voluntary appearance.

Those who are or should be named in the petition, if any there be, as being "in possession of or claiming the land or any part thereof otherwise than by the lease or permission of the petitioner," and may be designated as possessors or adverse claimants, are necessary party defendants and required, by the third paragraph of section 6, to be served with a copy of the petition and citation in the ordinary legal manner of serving such process in the proper State or Territory, and in like manner on the attorney for the United States.

It would seem, therefore, that, according to section 6 of the act of 1891 (26 Stat. L., 854), the service of process upon adverse possessors and claimants is as mandatory and necessary to the jurisdiction as the service upon the United States. (See also, in *pari materia*, sec. 1 of act of 1824, 4 Stat. L., 52, and *U. S. v. Moore*, 12 How., 209.)

With the United States and all adverse possessors, and claimants properly subjected to the jurisdiction of

the court, it shall then proceed to hear the cause on the petition, answers—if any have been filed—and proofs, and render a final decree, *according to the provisions of the act*; but in no case shall a decree be entered otherwise than upon full legal proof and hearing, and the court shall require the petition to be sustained by satisfactory proofs, whether an answer or plea shall have been filed or not. (Sec. 6, act of 1891, 26 Stat. L., 854.)

The case being properly at issue, the court is required, and given full power and authority, to hear and determine all questions arising in the case *relative to the title to the land, the subject of the case*, the extent and boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty, and the laws and ordinances of the government from which it is alleged to have been derived, and *all other questions between the claimants or other parties in the case and the United States*. (See sec. 7, act of 1891, 26 Stat. L., 854; see also *in pari materia*, sec. 2, act 1824, 4 Stat. L., 52.)

It will be noted that under section 2 of the act of 1824 the court is given “authority to hear and determine all questions arising in the cause relative to the *title of the claimants*, the extent, location, and boundaries of the said claim, and all other matters connected therewith fit and proper to be heard and determined, and, by final decree, to settle and determine the question of the *validity of the title* according to the law of nations, etc., * * * and all other questions properly arising between the *claimants and the United States*.”

It is also provided in the same section that an appeal may be prosecuted to the Supreme Court of the United States within one year from the date of the entry of the decree, "the decision of which court shall be final and conclusive between *the parties*, and should no appeal be taken, the judgment or decree of the said district court shall be final and conclusive."

Under these conditions, the conclusive effect of the decree rendered under the acts of 1824 and 1851 is in marked contrast with, and more restricted in scope and bearing than, that to be given to a decree entered under the provisions of the act of 1891, which provides (Sec. 13, subdivision 5, 26 Stat. L., 854), that "the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands."

It would seem, therefore, that in this latter act a purpose and intent was manifested by Congress that, by the judicial tribunal to which it had delegated the power to adjust the obligations of the United States under its treaties with Mexico, all and every obligation in each case should be so determined and adjusted and forever quieted that the decree might operate as a full acquittance so far as the United States was concerned, as to the land, "*the subject of the case*," not only as to the claimants, but as to all other persons claiming any interest or right in such lands.

If this purpose was proper, the procedure and practice to accomplish it is ample and sufficient to effect the intent entertained by Congress, if followed and strictly

conformed to, thus quieting and forever settling by adjudication all obligations of the United States in respect of all persons, including the plaintiffs, claiming any interest or right in the lands, "*the subject of the case.*" If so, then is suggested the query, which seems to have been totally lost sight of by the Court of Private Land Claims: How can the full acquaintance of the United States as to the particular land in controversy be judicially decreed, so as to effect the declared purpose of Congress, unless all such persons claiming any right or interest therein were given their day in court, and their claims, rights, and titles receive the benefit of a full, complete, and thorough investigation at its hands?

Under the California act of 1851 (9 Stat. L., 631) the practice, procedure, and rules of decision, as well as conclusive effect of decrees rendered thereunder, are radically different from those obtaining under the two acts of 1824 and 1891. No provision exists in that act for making adverse possessors and claimants parties defendant, nor are their interests in any way affected by the decree of the commissioners or district court unless it be in the evidenciary force given the same in the local courts after patent. That act provides (sec. 13, act 1851, 9 Stat. L., 631):

That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a

copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided further*, That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose instance the claim to the said lands has been confirmed from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the Commissioner of the General Land Office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

Section 15 of the *California Act* (9 Stat. L., 631) provides that the final decree of the commissioners or district court or Supreme Court, or any patent issued thereunder, "shall be conclusive between the *United States and the said claimants only*, and shall not affect the interests of third persons."

A comparison of the conclusive effect to be given the decrees of the commissioners and district court under the act of 1851, with that to be given to the decrees under the acts of 1824 and 1891, shows that there existed in the minds of Congress an intention to finally and forever quiet the title to the land, "*the subject of the case*," not only as between the claimants and the United States, but as to all persons having or claiming any interest or right in and to such lands, thereby acquitting the United States of all the obligations they assumed under the

treaty. And this can not be done unless there is given to the practice and procedure which Congress has provided a broad and liberal interpretation.

III.

THE VARIOUS ACTS OF CONGRESS FOR THE SETTLEMENT OF PRIVATE LAND CLAIMS ARE *in pari materia* WITH THE ACT OF 1891, AND ARE PROPER TO BE CONSIDERED IN DETERMINING THE INTENT AND MEANING OF THIS ACT. *Ryan v. Carter* (93 U.S., 78).

It is pertinent at this point to suggest that the framing and phraseology of the act of 1891 was intended to remedy the many defects discovered in former acts upon the subject.

Mr. Justice Miller, delivering the opinion of this court in the case of *Botiller v. Dominguez* (130 U. S., 238-251), says:

The wisdom, therefore, of the present act in regard to land claims in California is manifest by a comparison with these earlier statutes, in which Congress undertook to do the same thing which it desired to do in the act of 1851, but failed for want of a clear, satisfactory, and simple mode of doing it, by bringing all parties before a tribunal essentially judicial in its character, whose decisions should be final without further reference to Congress. But to have the benefit of the superiority of the plan of 1851 over former modes of establishing private rights to lands acquired by treaty, the latter statute must be carried out in accordance with the intention found in its provisions.

The consideration of that case clearly disclosed many defects and the unsatisfactory conclusion of the adjustment of private land claims in California, and was doubtless the cause of the long delay in providing an act for quieting such titles in the remainder of the territory acquired under the treaties with Mexico of 1848 and 1853. But the decision in that case, and the evident desire on the part of Congress to forever be relieved of the continual attempts to obtain from it confirmations of large areas of land, many of which were extravagant and others without merit at all—while within the out-boundaries of many claims Congress had attempted to dispose of large portions thereof, and often such attempted disposition had resulted in large investments, relying on the faith of the recognition of the possession and claim being lawful, by the United States patenting the same—determined it to create a judicial tribunal whose judgment under the practice, procedure, and principles of decision would forever satisfy the obligations of the United States, in so far as it proposed to delegate that power to such tribunal, in the force to be given to its decrees.

The fruits of such desire, and legislation to that end, are to be found in the act of March 3, 1891, and the hope is indulged that it will be so administered according to the legislative intent and purpose disclosed in its provisions and evidenced by those acts *in pari materia*, that its decrees, when entered, will be such satisfaction as the United States are willing to make of all obligations under the treaties, not only as to the claimants

(petitioners) in the case, but as to "all persons claiming any interest or right in such land." This can only be judicially conclusive by requiring the court as a matter of jurisdiction, before it shall pass a valid decree at all, to bring before it by due process all persons, if any there be, "in possession of or claiming the same or any part thereof otherwise than by lease or permission of the petitioner."

At this stage of this litigation it is incumbent upon us to be careful lest the very object of the law shall fail for want of proper enforcement of the provisions of this act.

This may be "an humble case, involving a tract of land of little value," yet an improper or careless administration of the act will lead to complications and results fraught with many dangers, and the undoing of the very purpose and intent of Congress as clearly expressed, to wit, that the decree when entered "shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such land."

The act is clearly one to quiet the title to the lands within the ceded territory, as between the United States and all persons claiming any interest or right in such lands, and the head of the Department of Justice, when the public interest or the rights of any claimant shall require it, shall cause a petition to be filed against the holder or possessor of any claim or land in any of the States or Territories mentioned in the Act, who shall not have voluntarily come in under the provisions of this act to have his claim settled and adjudicated. (*Sec. 8, Act 1891.*)

In section 12 it is also provided:

That in *any* case where it shall come to the knowledge of the court that minors, married women, or persons *non compos mentis* are interested in any land claim or matter brought before the court, it shall be its duty to appoint a guardian *ad litem* for such persons as in other cases, and if necessary to appoint counsel for the protection of their rights.

This provision was doubtless inserted by Congress in furtherance of the same purpose to effectually dispose of the private land claims under these treaties by the single tribunal and proceedings therein.

It is not uninteresting to note and follow the evolution of this character of legislation and the results.

It will be noted that in all three of the Acts, 1824, 1851, and 1891, claimants under imperfect grants are compelled to seek the jurisdiction provided respectively, or have their claims declared void and right barred—this feature is common to all.

Under the Act of 1824, the Court is given jurisdiction only of imperfect or equitable claims.

In the California Act of 1851 the commission, and the district court on appeal, are given jurisdiction of *any right or title derived from the Spanish or Mexican Government*, and in the case of *Botiller v. Dominguez, supra*, it was held to include every grade of title or inchoate right claimed, and was compulsory; those who failed to seek the jurisdiction losing all rights to recognition of their claims or property under the treaty.

It was seriously urged in the local courts of California, and sustained by the supreme court of that State, that a

perfect grant under the laws of Mexico "operated to vest in the grantees therein named all the right, title, and interest of the Mexican Government. They vested as much title under the laws of Mexico in the grantee as does a patent from the United States to the patentee under our system of government." And hence, the holders of perfect titles lost nothing by failing to present their claims to the commissioners under the act of 1851, nor did they "forfeit the land described in the grant by failure to present his claim for confirmation * * * , and the title so acquired by the grantee may be asserted by him or his successor in interest in the courts of this country."

The summing up of this contention is that the holder of a perfect grant could successfully challenge the grantee of the United States, although he had not availed himself of the jurisdiction, compulsory in its nature, to challenge the United States in a court of its own creation, or forfeit his lands.

It has been urged also, that provision amounted to confiscation without due process of law, all of which was held otherwise in the opinion of Mr. Justice Miller, *supra*.

When the Act of 1891 was framed and passed, a more liberal provision was inserted, that the holders of titles which were "not already complete and perfect" at the date of the treaty, but which "the claimants would have had a lawful right to make complete and perfect had the territory not been acquired by the United States," were required to invoke the jurisdiction of the Court of Private Land Claims within two years from March 3, 1891, or such titles were to "be deemed and taken, in all courts

and elsewhere, to be abandoned and forever barred." (Sec. 12, Act 1891.)

As to perfect grants, Congress created a permissive jurisdiction *upon terms*, and one which claimants might seek or decline; but if they voluntarily sought it, they did so *cum onere*. (Section 8, Act 1891.)

Having done so in this case, the claimant seeks to break down in "a humble case, involving a tract of land of little value," all the practice, procedure, and rules of decision, as well as limitations upon the exercise of jurisdiction, because, forsooth, his title at the date of the treaty was superior to that of the United States, and hence now superior to that of its grantee.

Then why seek the jurisdiction of the Court of Private Land Claims at all; why not stand aloof and go to the local courts and challenge the grantees of the United States?

Or, again, why did he not *coerce* the United States, under the provisions of the third paragraph of section 8, to challenge him? Had he taken either of these latter courses he might have been in a position to stand on the dignity of his title against the world. But there entered into the election to avail himself of the jurisdiction of the Court of Private Land Claims a concealed motive, by which he sought to avoid the real issues or mistook the act itself.

If he refrained from so doing, and was unable to coerce the United States into bringing the suit, he must then determine at his peril whether his grant was perfect or imperfect; and if his judgment were at fault, in any and all contests thereafter he must fail for want of title,

as the same must be "deemed and taken, in all courts and elsewhere, to be abandoned and shall forever be barred." (Sec. 12.)

He can not seek the permissive jurisdiction except upon the terms prescribed, nor can he be permitted to contest the propriety of their enforcement, however onerous they may be, even to the surrender of all his land, and be remitted to the indemnity section (14) of the act.

IV.

IF THE TITLE OF THE CLAIMANTS TO THE CUYAMUNGE LANDS WAS COMPLETE AND PERFECT "AT THE DATE OF THE ACQUISITION OF THE TERRITORY BY THE UNITED STATES," A DECREE OF CONFIRMATION ACTS AFFIRMATIVELY BY GIVING IT AN INTRINSIC EVIDENCIARY VALUE NOT BEFORE POSSESSED; AND, AS TO SUCH LANDS WITHIN THE CLAIM AS HAVE BEEN CONFIRMED AND PATENTED TO THE INDIAN PUEBLOS OF POJOAQUE AND NAMBÉ, IT IS A DOUBLE CONFIRMATION.

The decree does not except from its operation the lands theretofore confirmed and patented to the Indians, as required by section 8 of the act, but there remains to them an open contest with what the lower court was by the act compelled to determine, i. e., that the title confirmed by its decree was superior to any other Spanish or Mexican title, or any right or title that might have been conferred by the United States; and this, too, without an opportunity having been given them to contest the title which the court confirmed.

The opinion of the court goes behind and investigates

and decides against them the title of the Indians, which they have not been given an opportunity to either assert or defend, when the Government made it plain that their title was possibly as old as 1710 (R., 68, 69). This action is of doubtful propriety, even if the Indians were given their day in court, and is surely in no wise permissible without their lawful presence by due process.

The court could not properly hold the Sena grant entitled to confirmation unless, according to the scheme of this act, it found that the asserted title was superior to any other Spanish or Mexican title; and this view is impossible if the Indian title of 1710 to land their "right to which has hitherto been lawfully acted upon and decided by Congress" (sec. 13, par. 4, act of 1891), is valid under the confirmation in 1858. The determination of the question as to the validity of the Indian title has been foreclosed against the powers and jurisdiction of the Court of Private Land Claims, and the disposition of the land "*the subject of the case*" already made by Congress, must, in any event, "remain valid," and the petitioners remitted for relief to the indemnity clause of the act.

It was held in the case of *Landes v. Brant* (10 How., 347-370), under the *Act of March 3, 1807* (2 Stat. L., 440), following *Chouteau v. Eckhart* (2 How., 345) and *Les Bois v. Bramell* (4 How., 449):

When Congress confirmed and completed an imperfect claim, and then confirmed another and different claim for the same land, the older confirmation defeated the younger; nor could a court of justice go behind the first confirmation and ascertain from the facts and title papers which

claimant had the better original title; that if it was allowed, then the first confirmation could be overthrown by the courts, and the action of the political department (in all cases of double confirmation) would have no conclusive force when the courts were resorted to.

It is true that this only applies to imperfect titles, but the limitations imposed by Congress on the jurisdiction of the Court of Private Land Claims, when a perfect claim shall have been filed, show an evident intention on its part to hold good its previous legislative confirmations of any part of the land, as a condition precedent to the recognition of perfect titles in the Court of Private Land Claims.

V.

IT CLEARLY APPEARS, FROM THE RECORD AND THE OPINIONS IN THE CASE, THAT THE POLITICAL BRANCH OF THE GOVERNMENT HAD ACTED UPON THE TITLE TO PART OF THE LANDS LYING WITHIN THE BOUNDARIES OF THIS CLAIM, BY CONFIRMING AND PATENTING THE SAME TO THE INDIAN PUEBLOS OF POJOAQUE AND NAMBÉ, AND THE ENTIRE SCHEME OF THE ACT CLEARLY DISCLOSES A DETERMINATION ON THE PART OF CONGRESS TO HOLD THOSE CONFIRMATIONS GOOD AGAINST ANY PERFECT OR IMPERFECT GRANT THAT MIGHT SEEK THE DECREE OF THE COURT OF PRIVATE LAND CLAIMS, AND IT HAS EFFECTUALLY DONE SO BY SPECIFIC RESERVATIONS AND LIMITATIONS CONTAINED IN THE EIGHTH, THIRTEENTH, AND FOURTEENTH SECTIONS OF THE ACT.

The decree, therefore, neither in language, intendment, nor effect, finds, *as a fact*, that any portion of the land

had received the action of the political branch of the Government, but violates and ignores the specific limitations imposed by the eighth section :

* * * If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land *only* as such perfect title shall be found to cover, *always excepting any part of such land that shall have been disposed of by the United States.*

(See also sec. 14.)

In the absence of such specific exception, the decree in this case *is double confirmation* of all the land patented to the Indian pueblos of Pojoaque and Nambé that may fall within the outboundaries of this claim, yet the very object and purpose of the provisions of sections 6, 7, 8, and subdivisions 4 and 5 of section 13 will be defeated unless the Indian pueblos of Pojoaque and Nambé are permitted to contest, as codefendants of the United States, every question of law and fact properly arising in the case, and particularly whether the grant to Sena possessed any validity either as a perfect or imperfect title.

The rules of practice and procedure and principles of decision under the eighth section of the act, relating to perfect titles, are the same as in all other claims presented under the provisions of the act, and if the Sena land, or any portion thereof, has been wrongfully confirmed and patented to the Indians, still such disposition must "*remain valid*" and be specifically ascertained and excepted from the operation of the decree (*U. S. v. Moore*, 12 How., 209; *U. S. v. Castant*, 12 How., 442), and the

petitioners, if they so desire, may obtain in proper manner their recompense for such loss under the indemnity provisions of this act.

(See *U. S. v. Davenport's Heirs*, 15 How., 1-8.)

And when claimants of perfect claims seek this permissive jurisdiction, and are given the privilege of suing the United States in its own courts to obtain a confirmation of and patent for their land, as a consideration therefor they must submit to have such confirmation restricted to so much land *only* as the United States have not disposed of, necessarily excluding from the operation of the decree all lands the title to which has been acted upon by the political branch of the Government and confirmed by it to other persons.

If this disposition to other persons has been wrongful, by reason of the fact that the claimants hold a perfect title, or such an imperfect or equitable claim that they would have the right to call upon the United States as trustees to vest them with the legal title, they are entitled to compensation for the lands thus excluded or disposed of at a rate not exceeding \$1.25 per acre, as provided in section 14 of the act of 1891. This provision finds its sponsor in the land-scrip section (11) of the act of 1824, and the procedure to obtain this compensation should be in the same manner as that required to obtain land scrip. (See *U. S. v. Moore*, 12 How. 209.)

The provisions for compensation by way of land scrip, under the eleventh section of the act of 1824, and money under the fourteenth section of the act of 1891, can not be justified except upon the theory announced at the commencement of this brief, that the political branch of

the Government, in carrying out the obligations of the United States, under its various treaty provisions as to lands, intended that any unlawful disposition made by it subsequent to the treaty should be and "remain valid," and the original rightful owners of such land, so unlawfully disposed of, should receive land scrip under the one act and money under the other, as full compensation for the land of which they were thus unlawfully deprived.

Holders of perfect titles are not compelled to sue the Government, but when, by the grace of the United States, they seek and are afforded the jurisdiction of the Court of Private Land Claims, their claims are susceptible of all the restrictions and limitations with which Congress environed that jurisdiction.

In the case of *Tameling v. U. S. Freehold Company* (93 U. S., 644), the court states that it has been repeatedly held by it that the individual rights of property in the territory ceded by Mexico to the United States were not affected by the change of sovereignty or jurisdiction, but were entitled to protection whether the party had the full and absolute ownership of the land or merely an equitable interest. It further says:

The duty of providing the mode of securing these rights and fulfilling the obligations which the treaty imposed was within the appropriate province of the political department of the Government.

* * * * *

It is obviously not the duty of this court to sit in judgment upon either the recitals of matters of fact by the surveyor-general or his decisions declaring the validity of the grant. They are embodied in

his report, which was laid before Congress for its consideration and action. * * * Congress acted upon the claim as recommended by the surveyor-general. * * * The confirmation being absolute and unconditional, without any limitations as to quantity, we must regard it as effectual and operative for the entire tract. The objections to the validity of the grant have been earnestly and elaborately pressed upon our attention. This matter was for the consideration of Congress; we deem ourselves concluded by the action of that body. * * * The phraseology of the framer of the act is in our opinion explicit and unequivocal. We have at the present term in *Ryan v. Carter* (*ante* 807) recognized and enforced as the settled doctrine of this court that such an act passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and that the grant may be made by law as well as by patent pursuant to the law.

The language of section 8 of the act of 1891, which provides that there shall be excepted from the decree of confirmation "any part of such land that shall have been disposed of by the United States," when construed in connection with the provision of section 14 that "if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid," is broad enough to include every character of disposition made by Congress or under its authority; had Congress intended such dispositions to be restricted to those made under the public-land laws, under railroad grants, and the like, it

would have specifically defined each and every kind of disposition it had in mind. But, instead, by the use of the general language, "any part of such land that shall have been disposed of by the United States," it included every variety and kind of disposition already made.

There is nothing in the whole act which furnishes any semblance of justification for the narrow construction which the court has, in its majority opinion, sought to place upon this provision. Nor can any precedent for the course of the court be found in the language or construction of the provisions contained in the act of 1824, *in pari materia*.

In concluding the opinion of the court, Mr. Justice Murray says (R., 79):

This court held at a former term that the provisions of section 14, allowing compensation in certain cases, did not apply where the land claimed in this court under a title from Spain or Mexico had been patented by the United States to another claimant under a Spanish or Mexican grant; that such action by the Government did not amount to a sale or grant by the United States within the meaning of said section. To exclude the land granted to the petitioners in this case, covered by the patents of the pueblos, would amount to a confiscation of the land so excluded.

It is difficult to understand how the exclusion, which Congress has provided as a condition precedent to the acceptance of the permissive right to sue the United States in its tribunal, can amount to a confiscation of the land so excluded, when for this wrongful disposition of the excluded land Congress has provided adequate money

compensation, just as it provided land script under similar conditions in the act of 1824.

Again, the opinion says (R., 79):

A decree confirming the grant as a complete and perfect one, to the extent of the boundaries called for in the grant, will be entered in this case. When this is done, the manifest intention of Congress will be carried out, and the rights of the pueblos (if any) will not in any way be affected.

Even if the latter part of this observation were true, nevertheless Congress has specifically provided that such lands shall be excluded from the decree, and it is beyond the province of the Court of Private Land Claims to judicially repeal its provisions in this respect.

Again (R., 79):

The question of the validity of their title under their patents, and the validity of the petitioners' title under a decree of confirmation by this court, can be determined as between the parties themselves by the local tribunals in a proper proceeding instituted for that purpose.

Had it been the intent of Congress to permit the holders of perfect titles to enter the Court of Private Land Claims and secure its decree of confirmation, and to license them unreservedly to use it as a weapon of offense against those who had theretofore obtained from Congress the recognition of their right to the land under the treaty, it was indeed unfortunate to compel a resort to the expensive and cumbersome mode of another litigation in the local courts, and a sad commentary upon Congress' wisdom as to economy in judicial procedure.

Why should holders of perfect titles be permitted access to the jurisdiction of the Court of Private Land Claims, and by not excluding from their decrees of confirmation the land within the outboundaries of their claims which Congress has theretofore disposed of be afforded in the use of that decree an additional means of attacking the title which Congress previously gave, when their complete and perfect title was already sufficient for all purposes?

VI.

THE DECREE OF CONFIRMATION, IN NOT EXCEPTING FROM ITS OPERATION THE LANDS PATENTED TO THE INDIAN PUEBLOS OF POJOAQUE AND NAMBÉ, INTERFERES WITH AND IS AN ATTEMPT TO OVERTHROW A "JUST AND UNEXTINGUISHED INDIAN TITLE OR RIGHT" TO THEIR LANDS AND HOMES.

No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place. (Sec. 13, subdiv. 2, act of March 3, 1891, 26 Stat. L., 854.)

Admitting, for the purpose of this point, that the Indian pueblos did not have a *just title* to any land or place in controversy, still they did possess some *right*, however inchoate, and which, beyond question, had existed since 1710, and such inchoate right has been recognized by the political branch of the Government by its confirmation on December 22, 1858 (11 Stats. L., 374), and carried to patent and been claimed thereunder ever since. No contention *arguendo* can justify the decree of confirmation

in this case in violation of the section of the act just quoted.

The court, in the majority opinion, gratuitously assumed the task to write away, if not a just and unextinguished title, at least a *right* of the Indians to their lands and homes, enjoyed and beneficially used by them long before the date of the alleged Sena grant, and recognized by the United States under the treaty, and to do so ignored the limitations and restrictions in the law of its creation.

Ainsa v. U. S. (161 U. S., 208).

U. S. v. Santa Fe (165 U. S., 675).

U. S. v. Sandoval (167 U. S., 278).

Hayes v. U. S. (170 U. S., 637).

VII.

THE SAVING OF THE RIGHTS OF ALL CLAIMANTS AND OTHER PERSONS, INTER SESE, PROVIDED IN SECTION 8, PARAGRAPH 2, IN RELATION TO PERFECT TITLES, AND IN SECTION 13, PARAGRAPH 5, AS TO THE CONCLUSIVE EFFECT OF ANY DECREE OF THE COURT IN RELATION THERETO, IN NO WAY MILITATES AGAINST THE CONCLUSIVE EFFECT, INTENDED BY CONGRESS TO BE GIVEN TO DECREES OF CONFIRMATION, THAT THEY SHALL OPERATE AS AN ACQUITTANCE OF ALL OBLIGATION OF THE UNITED STATES UNDER THE TREATY IN RESPECT OF THE PARTICULAR LAND AS TO "ALL PERSONS CLAIMING ANY RIGHT OR INTEREST IN AND TO SUCH LAND."

If in any such case a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such

perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or title in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States, and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby. (Sec. 8, par. 2, Act of 1891.)

No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands. (Sec. 13, par. 5, Act of 1891.)

When Congress provided in section 6 of the act that all adverse claimants and possessors were necessary parties defendant, and in section 7 that it was the duty of the court to hear and determine all questions properly arising in the case "relative to the title of the land, the subject of the case," and required it to decide the same according to the law of nations, the stipulations of the treaty, and the laws and ordinances of the Government from which it is alleged to have been derived, "and all other questions properly arising between the claimants or other parties in the case and the United States," it became necessary, in order that the Government might

be released from its obligations to any and all persons, to determine among them all which had the better title, if any had; and this question had to be first determined also, that it might be ascertained whether or not the Government, in wrongfully disposing of any portion of the lands claimed, had subjected itself, by its consent, to the damages provided in the indemnity clause of the act, and, if so, to what extent and to whom it was liable, not exceeding \$1.25 per acre. These inquiries must obviously be made and settled in order that the court may determine when, where, and to whom the United States became obligated, if at all.

As the primary object of the decree to be rendered is to discharge the United States from its obligations under the treaty, all matters of estoppel and claims *inter sese*, which may come up before or be decided by the Court of Private Land Claims shall not, therefore, be made the subject of pleas in other and different tribunals; nor will those who have interests in privity with the claimants be concluded in any way, by the finding of the Court of Private Land Claims, from asserting their right to participate in the benefits of the confirmation, if, in the local courts, they can show sufficient facts to hold the court's confirmee as trustee for their benefit.

Nevertheless, the saving of these rights *inter sese* must be subjected to the restrictions and limitations to which the Court of Private Land Claims, in its entire jurisdiction, is subordinated in the entering of its decree, viz :

First. If the grant shall be found to be the better grant, and yet imperfect, and the United States has sold or granted or otherwise disposed of any portion of the

land lying within the outboundaries, the Government, at the time of such disposition being the holder of the legal title, having transferred it to some one other than the claimant in the Court of Private Land Claims, that transfer must of necessity remain valid, for the legal title has passed out of the Government to its confirmee, and it retains nothing which is capable of being vested in the claimant before the Court of Private Land Claims.

Second. If the grant in question be found a perfect grant, and the United States has sold or granted or otherwise disposed of any portion of the land lying within its outboundaries, nevertheless, as a condition precedent to the acceptance of the invitation to invoke the jurisdiction of this special tribunal, the claimant of such perfect title has submitted to having that wrongful disposition remain valid and excepted from the operation of his decree of confirmation.

Hence these saving clauses *inter sese* in no way vitiate the force of the contention, originally made, that all dispositions previously made by the political branch of the Government, whether rightful or wrongful, shall not be open to attack or criticism in the local courts by reason of any decree of confirmation rendered by the Court of Private Land Claims. And the observation which has been made as to the concluding portion of the majority opinion in this case may here be repeated, that the attempt has been made to plaster the confirmation of what it assumes to be a perfect grant upon a long prior disposition by Congress of the same land, and which the very act itself says shall be exempt from the influence of the decree.

Ordinarily, a general reservation that no land sold, granted, or disposed of by the United States shall be affected by the decree would cover the exception required by the act, in order that the decree of confirmation may not be used against the Government's older grantee in case of the confirmation of a perfect title. But Congress has gone even further than this, and has provided that the specific land and the particular parties to whom it has been confirmed must be ascertained, so that it may be excepted from the decree and identified without further difficulty.

If, as is disclosed in the decree and stated in the majority opinion of the court, the specific exception of the land disposed of by the United States is not made, and resort remains to the local court for determination of this question, it is true that the consequences may amount to little in this case. Still, in many others involving larger and more valuable grants, ejectments will be brought in the local courts, and, however they may be determined there, this question and these suits will all be brought back to this court, on writs of error or appeal, for a construction of the act of the Court of Private Land Claims, and, particularly that part thereof which provides for the exclusion from its decree, when the grant shall be confirmed as complete and perfect, of any portion of the same land that shall have been disposed of by the United States to other parties. This is one outcome that Congress sought to avoid when it framed and enacted this act, that the decrees of the Court of Private Land Claims should not be used against its own prior

confirmees in controversies in the local courts over litigious titles.

VIII.

The suggestion of counsel that this appeal is not in time, and that the Government has no concrete interest in the case, comes with little grace in the light of the record's disclosures. The Indians were never parties to the suit by due process, and no judgment can be conclusive as against the United States as to "all persons claiming any interest or right in such land," until the provisions of sections 6 and 7 of the act have been complied with by bringing properly into court all adverse possessors and claimants.

Although this is "an humble case, involving a tract of land of little value," it is submitted that the construction which the majority opinion of the court places upon the act of 1891 warrants the Government in its appeal for the benefit of itself and the Indians of Pojoaque and Nambé, that the decision rendered may not be used hereafter as a precedent in other cases involving like issues but larger interests and greater values.

It is submitted that the case should be reversed and remanded, with directions to the Court of Private Land Claims to make the Indian pueblos, as well as all other claimants and possessors, parties defendant, and to proceed to hear and determine all "questions properly arising between the claimants or other parties in the case and the United States," and if it shall decide that the grant in question is a complete and perfect one, the same

shall be confirmed, with the exception of the land which has heretofore been disposed of by the United States to the Indian pueblos of Pojoaque and Nambé by the act of Congress of December 22, 1858.

Respectfully submitted.

JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.



No. 86, 13.

CHIEF JUSTICE COURT U. S.
FILED
NOV 7 1898
JAMES H. MCKENNEY,
Clerk

Brief of Knaebel for Appellee

IN THE

SUPREME COURT

Filed Oct. 7, 1898.
UNITED STATES.

OCTOBER TERM, 1898.

THE UNITED STATES,

Appellant,

vs.

No. 86.

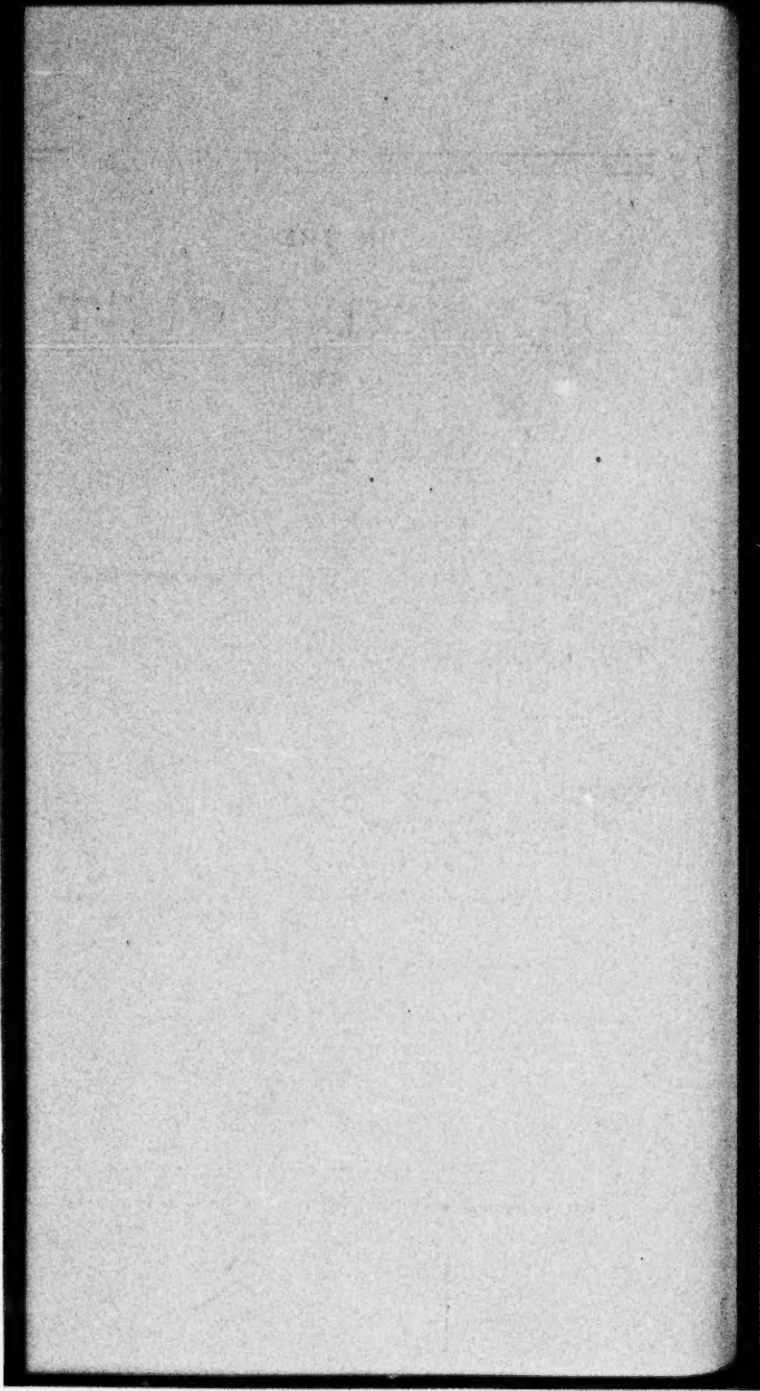
MARIA DE LA PAZ VALDES
DE CONWAY, ET AL.

BRIEF IN BEHALF OF APPELLEES.

JNO. H. KNAEBEL,

Of Counsel for Appellees.

The Denver City Publishing Co., Printers, 1514 Curtis Street, Denver
F. P. DUMAS, Manager.



IN THE
SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1898.

THE UNITED STATES,

Appellant,

VS.

No. 80.

MARIA DE LA PAZ VALDES

DE CONWAY, ET AL.

BRIEF IN BEHALF OF APPELLEES.

Statement.

This is an humble case, involving a tract of land of little value, and, therefore, as well as because of the self-evident merits of the decree from which the government has seen fit to take its delayed appeal, the claimants are content to submit their interests in

the premises upon the record, the elaborate opinion of the court below (*Transcript*, folio 131), and this short statement and argument.

The Court of Private Land Claims, on the twenty-fourth of October, 1895, confirmed the Cuyamungue Grant, New Mexico, "as a complete and perfect title to the extent of the boundaries called for in the grant and act of possession"—the same being a Spanish grant made on the second of January, 1731, and the lands affected having been actually possessed by the original grantees, their heirs and assigns, down to the present time; but, in its decree (*Trans.*, folio 128), the court provided that "this confirmation shall in nowise affect the rights of the Pueblos of Pojoaque and Nambé (if any they have), as between them and the said confirmees, under their patents issued by the United States government."

The provision as to the Indian Pueblos was inserted, because those Pueblos, like nearly all others in New Mexico, had, prior to 1860, presented to the surveyor-general of New Mexico, their several claims to *town grants*, each Pueblo, as a rule, asking *four square* leagues, on the alleged presumption that every town, Indian as well as Spanish, was entitled to that quantity of land. The testimony taken before the surveyor-general, in the Pojoaque case, is found at folio 121 of the *Transcript*, and, in the Nambé case, at folio 123. No documentary proof was offered in either case—only such vague oral testimony as "We claim one league from the corners of the church towards the four cardinal points, and are *entitled to the same amount of land as the other Pueblos*," and "we

claim one league in each direction from the four corners of the church." Doubtless these Pueblos had received from Spanish governors some papers describing the extent of their granted lands, but the Indian agents who had looked after the proceedings for confirmation pretermitted all serious effort towards their production, relying exclusively on the pretended presumption. The mischief of this course is seen in later cases (*e. g.*, Santa Clara) wherein Pueblo papers were discovered which were utilized in gaining, or attempting to gain, additional land for certain Pueblos outside of "presumed" grants already confirmed.

The fallacy attending these theoretic Pueblo titles is exposed by Mr. Justice Murray in his opinion (*Trans.*, folio 133 *et seq.*), as well as in his dissenting opinion in the Santa Fé case, and finally and definitively by this court in its opinion reversing the Santa Fé confirmation (*United States vs. Santa Fe*, 165 U. S. 675.). The two Pueblos were made parties defendant (*Trans.*, folio 124), and, after the decree, they moved to vacate it (*Ib.*, fol. 153), but, after due advisement, the motion was denied (*Ib.*, folio 155.). Nothing to the contrary appearing, the action of the court must be deemed competent and regular. (*Lutz vs. Linthicum*, 8 Pet. 165.)

No appeal has been taken by either the claimants or the defendant Pueblos, and the government delayed its appeal until the fourth of January, 1897 (*Ib.*, folio 157.).

Although we have not been favored with a copy of the government's brief, and the clerk, by letter

of the tenth of October inst., informed us that none had yet been filed, we assume that the facts as found by the Court of Private Land Claims in its opinion (*Trans., fols. 131, etc.*) are conceded, and that only a construction of statutory law is involved in the appeal; otherwise, we suggest a diminution of the record, since much evidence going to relevant matters of fact has been omitted in the perfunctory preparation of the record, for example, the evidence recited by Mr. Justice Murray (*Ib., fol. 132, page 73*) as to the proceedings of Governor Alencaster, in 1805, in vindication of the rights of the claimants under our grant as against neighboring Pueblo Indians, and even more significantly, the important matter referred to in an order of the court (*Ib., folio 124*), in the following language:

“And, further, as to certain original muniments of title produced from the custody of the claimants, introduced in evidence, that the annexed abstract thereof, in English, made by Mr. Henry O. Flipper [a federal agent], be taken and considered as the equivalent of the originals.”

We understand that the government insists (although it has no beneficial interest in the question) that the court below should, by its decree, have undertaken to adjudicate that the Pueblo patents operated destructively on a part of our title.

ARGUMENT.

First.

The decree of confirmation having become final on the second of December, 1896, the date of the denial of the motion to vacate it—if, indeed, its finality does not date from its entry, the twenty-fourth of October, 1895—could never be reversed or disturbed by appeal on behalf of either the claimants or the defendant Pueblos, unless such appeal should be taken within six months from the said day of finality. (Land Court Act, 26 Stat., page 854, § 9.)

No such appeal has been taken, and the right to take it has been absolutely lost by lapse of time.

Second.

The present appeal was taken by the United States only—“the above-named defendant, the United States, considering itself aggrieved, * * * doth hereby appeal,” etc. (*Trans.*, folio 157). But the United States has no possible concrete interest in the only question which it attempts to raise, namely, whether the court below should have excepted from the confirmation of our grant the parcels of land claimed by the Pueblos of Pojoaque and Nambé, respectively. It is manifest that, in view of the acquiescence of the claimants and the two Pueblos in the decree, the government is merely attempting to use its appeal as an instrumentality to secure an opinion on an *abstract* question; but such practice is intolerable.

The Indian Pueblos are corporations capable of suing and being sued.

“The inhabitants within the Territory of New Mexico, known by the name of the Pueblo Indians, and living in towns or villages, built on lands granted to such Indians by the laws of Spain and Mexico, * * * are severally hereby created and constituted bodies politic and corporate, and shall be known in law by the name of ‘Pueblo de ———,’ (naming it), and by that name they and their successors shall have perpetual succession; sue and be sued, plead and be impleaded, bring and defend in any court of law or equity, all such actions, pleas and matters whatsoever, proper to recover, protect, reclaim, demand or assert the right of such inhabitants, or any individual thereof, to any lands, tenements or hereditaments possessed, occupied or claimed contrary to law, by any person whatsoever; and to bring and defend all such actions, and to resist any encroachment, claim or trespass made upon such lands, tenements or hereditaments, belonging to said inhabitants, or to any individual.”

(Compiled Laws of New Mexico, § 1304.)

The members of said Pueblos are not “Indians” in the ordinary sense of the term, but are citizens of the United States. (*United States vs. Lucero*, 1 N. M. 422; *United States vs. Santisteran*, *Ib.* 583; *United States vs. Joseph*, *Ib.* 593,—affirmed 94 U. S. 614.) And such “Indians” are not wards of the government in any just political sense, nor are they

within the letter or intent of the n^{on}-intercourse acts, or of the law or policy which put prohibitions and restrictions on contractual and other dealings between the tribal Indians and white men. (*Ib.*)

The Pueblo Indians are civilized—freeholders from time immemorial; but the tribal Indians are savages or barbarians, associated in *quasi*-autonomies suggesting some of the features of sub-sovereignty, and hence our government has always assumed the exclusive supervision and management of their affairs and struggled to save them from the interference of the whites. Dealings with such a subject pertain exclusively to the political department of the government, and are not adapted to judicial measures. See *Ely vs. Wilkins*, 112 U. S. 94; also *note* to 3 Stat. 709; 2 Story, Const., § 1933; and also the opinion of Mr. Justice Miller in *United States vs. Joseph*, 94 U. S. 614.

It seems to follow that the government's appeal should be dismissed.

Third.

The learned and admirable opinion of Mr. Justice Murray is worthy of being adopted as the opinion of this court. (*Trans.*, fol. 131.) Attention to his data and reasoning will show that he effectually destroys by argument every adverse position taken by the government.

Fourth.

All the justices below concurred in holding the grant to be complete and perfect, although a minor-

ity thought that, notwithstanding the perfection of the grant title, a confirmation ought (as claimed by the government) to be couched in such terms as to *destroy* our title (however rightful) to such parts of the grant as are covered by the *ex parte* surveys of the two Pueblos above named. This extraordinary suggestion of ruthless confiscation proceeds on the grounds next below stated and combated, viz:

1. The second subdivision of section 13 of the Land Court Act reads:

“No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.”

The government, illogically confusing a “complete and perfect title” (immediately protected by the Constitution) with an executory “claim” dependent on the sense of justice of the political department, and misinterpreting the term “Indian title,” contends that this clause of the act prevents a confirmation of our “complete and perfect” title.

(a) It is evident that the prohibition of the statute is to be gauged by the nature of the “claim” presented. The distinguished senator who was chiefly concerned in the passage of the statute always insisted that executory claims (called, indifferently, “inchoate,” “incomplete,” “imperfect” or “equitable” grants) are subjects of *political* discretion exclusively, and might be confirmed, either in whole or in part, or on condition, or rejected altogether, at the will or caprice of Congress, without infraction of

the Constitution; and, hence, as to such claims, he introduced into his bill the eleven leagues limitation, purely as a matter of economic policy, although that limitation was unknown in the Spanish law, and only to a limited extent in the Mexican law. But he always conceded (as this court has always conceded) that a "complete and perfect title" under Spain retained its dignity of character when transplanted to our dominion. The same plain proposition is conceded by the case of *Botiller vs. Domingues*, 130 U. S. 238, although the court, consistently therewith, held that it is notwithstanding competent, in securing a proper knowledge and delimitation of the public lands, for Congress, by appropriate legislation, to call on claimants of even perfect titles to present them for adjudication before an appointed tribunal. Accordingly, by section 8, it was enacted that the holder of a title that was "complete and perfect," at the date of the treaty of cession, "shall have the right (*but shall not be bound*) to apply to said court in the manner in this act provided for other cases for a confirmation of such title," etc. (26 Stat., page 854, § 8.) By this it was not intended to provide that the holder of such a title, in case he, at his option, or the government at its own, should present it for judicial consideration, must fall into the peril of losing (without compensation) any part of the lands fairly vested in him under that title. True, by section 14 of the statute, an attempt (probably unconstitutional) is made to compel the holder of a complete and perfect title, seeking its confirmation, to acknowledge prior government sales or grants

of any specific parcels of his property, however fraudulent or otherwise unjust such clouds might be; but, it will be noticed, this condition is mitigated by the government's promise to pay the grant holder, out of the national treasury, one dollar and a quarter for every acre of which he shall be divested in the arbitrary manner proposed. (26 Stat., page 854, § 14.) Manifestly, however, this provision had exclusive reference to cases in which the government had made an actual "sale" or "grant" of parcels believed by its officials to be public lands, and in which the government was bound in justice to protect its vendee or grantee; but the provision had no reference to the mere "quit-claims" or "releases" intended by either legislative or judicial confirmations of private land claims. In the act confirming the Pueblo claims of Pojoaque and Nambé (11 Stat. 374), it is expressly provided "that this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights, should such exist." And the Land Court Act expressly provides (§ 8) that "no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a *release* of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby;" and also (*subd.* fifth, § 13), that "no proceeding, decree or act under this act shall conclude or affect the private rights of persons as between each other, all which

rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands;" and, further (*subd.* sixth, § 13), that "no confirmation of or decree concerning any claim under this act shall in any manner operate or have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims or lands, or their disposition, otherwise than in this act provided."

Since the only cases, wherein compensation by the United States for private lands of which it had assumed to make disposition (Section 14), are expressed to be cases of *sales* and *grants*, no compensation could be demanded of the government by the holder of a perfect title for the "relinquishment," "quit-claim," or "release" to a stranger of any parcels of his estate, and his only protection against such intruders is his right (conceded in all the legislative confirmations as well as in the above provisions of the Land Court Act) to protect himself by invocation of the law of the land in the ordinary tribunals.

From the cited provisions, as well as from the general tenor of the statute, it is plain that the Land Court was not equipped with jurisdiction to settle conflicting claims of individuals, or to compare adverse private titles and decide between them, or,

finding a claimant to have a "complete and perfect title," to refrain from declaring and adjudicating such completion and perfection to the full extent made apparent by the original title papers according to the meaning and the force which they had at the date of the treaty. The language of section 14 confirms this proposition, for that section contemplates the possibility that *all* the lands "decreed to any claimant" may have been "sold or granted by the United States" to strangers, and, while it attempts (unconstitutionally) to render such decree ineffectual as against such sales and grants, still makes the decree itself a necessary condition precedent to an award of compensation for their loss. This goes to show that, whatever limitation is attached by the statute to the *effect* of such a decree, it is still the duty of the court to construe the title of the claimant in harmony with its legal standing at the time when the treaty guaranteed its protection. See, on this point, the observation of this court in *United States vs. Chaves*, 159 U. S. 452, at page 465.

(*b*) Even if the villagers of Pojoaque and Nambé were tribal Indians, their title to any part of our grant could not be adjudicated as "*just*." This is demonstrated clearly by Mr. Justice Murray in his opinion. He adds these pertinent observations (*Trans.*, fol. 136):

"It would hardly be insisted under the facts of this case that the Pueblos of Nambé and Pojoaque had any just right to claim at the date of the treaty of Guadalupe Hidalgo any part of the land covered by this grant.

It is equally clear that the United States did not acquire any right or interest in the land of the citizen in the ceded territory held by a complete and perfect title at the date of said treaty."

But it is unnecessary to discuss the question of the court's jurisdiction on the false assumption, even made *argumenti gratia*, that a Pueblo title is a "just and unextinguished Indian title or right," within the meaning of the statute. In our second point (*supra*) we have taken occasion to point out the difference of status between the civilized Indians of a Pueblo and the savage tribal Indians; but we now assert with confidence that, in every one of the numerous statutes, dating from the act of March 18, 1796 (1 Stat. 464, § 1), including the acts of March 26, 1804 (2 Stat. 277, 291), March 27, 1804 (2 Stat. 303, § 8), March 2, 1805 (2 Stat. 324), April 18, 1806 (2 Stat. 381), March 3, 1815 (3 Stat. 228), March 3, 1817 (3 Stat. 375), April 20, 1818 (3 Stat. 466), March 3, 1819 (3 Stat. 521), May 8, 1822 (3 Stat. 709, and elaborate note), and so forth, down to the Land Court Act, the "Indian titles" referred to as "extinguished," or to be "extinguished," or "unextinguished," had exclusive reference to the *quasi-sovereign* titles of savage or barbarous tribes then in occupation of divers parts of the Indian country, and had no possible reference to Indian Pueblos. Indeed, when Indian titles and their extinguishment became the object of congressional legislation, and until our war with Mexico, the status of Indian Pueblos was known only to a few of our citizens, and was utterly

ignored in our legislation. It is not easy, nor is it now necessary, to determine why the statute refers at all to the subject of "just" and "unextinguished" Indian titles, although, with reference to some reservations, such as the Navajo, Apache, Ute, and others, we may suggest that, pursuing an old and well established policy, Congress may have preferred to retain to itself jurisdiction of all controversies between citizens and tribal Indians, instead of subjecting those wards of the nation to the hazards of private litigation; just as, in the passage of the act of March 27, 1804, regulating certain grants of land, etc. (2 Stat. 303), it was provided (§ 8) "that no certificate should be granted for any lands [south of Tennessee] to which the Indian title has not been extinguished."

The language of the Land Court Act on this subject is *in pari materia* with similar phraseology adopted in the many enactments for a century past, and should properly bear the same construction. As to the status of the tribal Indians, the opinion of Chief Justice Marshall, in *Johnson vs. McIntosh*, 8 Wheat. 543, is of much historical importance.

2. The fourth subdivision of section 13 of the Land Court Act reads:

"No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority."

Under this provision, the government now claims that Congress, by its confirmation of the Pueblo titles,

has lawfully and definitively acted on the "right" to so much of our land as has been included in the Pueblo surveys. But it is clear that Congress, by the very terms of the confirmation, *declined* to act upon the very "right" to any land, but, on the contrary, expressly excepted from its action all lawful adverse claims. Congress only relinquished or released any claim as between the United States and the Pueblos, but granted nothing. Of course, even such a release might operate as a new grant, if the land were public domain, but not otherwise. In the language of Mr. Justice Murray:

"The confirmation of this [the Cuyamungue] grant would not be a claim allowed for land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority, for the reason that Congress did not undertake to decide who was the rightful owner of the land confirmed to the Pueblos of Nambé and Pojoaque, but on the contrary it is expressly stated in the patents issued to them that it is not to interfere with any prior right to the land which may have been held by other parties. The action of Congress on the claims and the issuance of the patents thereunder is nothing more than a release to them of whatever interest the United States might have in the land. In this case we have shown that the United States had no interest in the land to release. A confirmation of the grant to the extent of the boundaries would not in any way affect the rights of the Pueblos under their patents (if they had

any) as against the petitioners. They are fully protected by subdivision 5 of section 13 of the Act of March 3, 1891."

The only object of Congress in providing the restriction just considered was to prevent claimants whose pretensions had already been disposed of by statute from undertaking to renew them before the Land Court.

3. No argument is needed to show that the clause of section 8 of the act providing for the exception from a decree of confirmation of any land that "shall have been disposed of by the United States," has exclusive reference to the dispositions by *sale* or *grant* mentioned in section 14, and in respect of which due compensation is thereby sought to be awarded.

Fifth.

It is not the intent of the act to confer authority on the Land Court to pass definitively on the rights of adverse claimants to the same land as between themselves, and no decree of confirmation which it may render can debar adverse claimants from setting up their presumptions in the local tribunals, after all contest with the government has been concluded. Therefore, the decree in our case, so far from adjudicating on the Pueblo title in any binding sense, merely confirms our claim subject to any superior title which the Pueblos may be able to show on proper occasion. This is expressly stated in the decree. It was certainly not competent for the court, on finding our written title complete and per-

fect, to adjudicate that it should never be asserted against the Pueblo claims. No such outrage is justified by anything in the statute. It does not even authorize the court to decline jurisdiction, and that is the most that Congress could have constitutionally provided to our prejudice. It has never been the policy of the government to turn over controversies of citizens *inter se* to any of the numerous special tribunals established from time to time for the settlement of land claims under the political duty imposed by foreign treaties. The only purpose of such judicial establishments has been to determine the validity of private titles as against the sovereign power which granted them, and consequently against our government as successor in sovereignty; thus effecting a definite separation from the public domain of lands which ought in justice to be classed as private property. As to incomplete or executory private land claims this federal jurisdiction is exclusive, and its exercise is necessary to give to the private claimants due protection in the municipal courts, otherwise powerless to act definitively in determining the respective rights *inter se* of conflicting claimants. It has not been intended by this federal legislation to usurp the jurisdiction appropriate to the municipal courts. On the contrary, the intent has been to assist those tribunals to a full exercise of their judicial functions in respect of all matters of title in which the government should have been bound by statute or judicial decree to have no interest. Hence the federal tribunals, in the settlement of California private land claims asserted against the government,

have declined to pass upon the comparative merits of conflicting claims, but have contented themselves with confirming every claim which has appeared regular on its face, upon the independent consideration of the muniments of title presented.

A glance at the government map of New Mexico will show numerous confirmed grants overlapping one another and thus presenting questions proper for the ordinary courts, but in which the government has no interest.

It was admitted in *Interstate Land Co. vs. Maxwell Land Co.*, 139 U. S. 569, 580, 588, that the plaintiff company might have prevailed had it shown a perfect grant.

Doe vs. Eslava, 9 How. 421; *Berthold vs. McDonald*, 22 How. 334.

In the language of Mr. Justice MILLER—

“ But the United States, in dealing with the claimants of lands under Mexican grants, which had come into the political control of our government by the treaty of Mexico, never made pretense that it was the owner of the lands so granted by Mexico. When, therefore, guided by the action of the tribunals which the government had established to pass upon the validity of these alleged grants, it issued a patent to the claimant, it was in the nature of a quit-claim—an admission that the rightful ownership had never been in the United States, but at the time of the cession it had passed to the claimant, or to those under whom he claimed. This principle has been more than once clearly announced in this court. The leading cases

are *Beard vs. Federy*, 3 Wall. 478; *Henshaw vs. Bissell*, 18 Wall. 268; *Miller vs. Dale*, 92 U. S. 478.

“Such a patent was, therefore, conclusive only as between the United States and the grantee, and was evidence that, as to them, the claimants had established the validity of the grant. * * * We do not think, therefore, that if defendant’s survey and patent are based upon a superior Mexican grant, their rights are concluded by the prior survey of the plaintiffs.”

Adam vs. Norris, 103 U. S. 591.

Multo fortiori, these considerations apply to a “complete and perfect title” of the class to which the Indian Pueblo patents were, by their express terms, made subject and subordinate.

Respectfully submitted,

JNO. H. KNAEBEL,
Of Counsel for Appellees.



No. 86. 13.

Office Supreme Court U. S.
FILED

JAN 30 1899

JAMES H. McHENRIE
Clerk.

Sup. Dy. of Knaebel for Appellees
IN THE

SUPREME COURT

Filed Jan 30, 1899.

UNITED STATES.

OCTOBER TERM, 1898.

THE UNITED STATES,

Appellant,

vs.

No. 86.

MARIA DE LA PAZ VALDES

DE CONWAY, ET AL.

SUPPLEMENTAL BRIEF IN BEHALF OF
APPELLEES.

JNO. H. KNAEBEL,

Counsel for Appellees.



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SUPREME COURT

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VS.

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No. 86.

SUPPLEMENTAL BRIEF IN BEHALF OF
APPELLEES.

Our original brief, filed the seventh of November, 1898, was prepared in anticipation of the positions which the government might take, and recent inspection of the government's brief—filed the twelfth of January, 1899, and not brought to our notice until

after the submission of the case on appeal—indicates that we have already covered, in substance, all the points which the government has now presented. Nevertheless, availing ourselves of the leave graciously accorded to us by the court, we deem proper to submit the following addenda, in corroboration of our former argument.

In considering the statute in question, it must be borne in mind that the primary object of the statute is to ascertain and determine whether land claimed in any case as private property, under the treaties with Mexico, is in fact private property, or, on the contrary, is public property. In the latter case, the statute provides for the classification of the property as part of the public domain, but, in the former case, the statute submits the rights of the owners *inter se* to the operation of the ordinary law of the land. In other words, the government is not made by the act the champion of merely private rights of property in which it has no legal or beneficial interest.

The argument now presented by the government concedes: 1st, that the government has no interest in such parts of our grant as are embraced in the surveys and patents of the pueblos of Pojoaque and Nambé; and, 2nd, that it has no interest in the remainder of the land in controversy. It admits that our grant is complete and perfect, and belongs to us, save that it contends that, by *ex parte* legislative jugglery, the Indian pueblos have become vested, *as their private property*, with a part of our estate. By this proposition, the government states itself out

of court. United States vs. Morillo, 1 Wall. 706; Meander vs Norton, 11 Wall. 442.

Although the statute provides for the inclusion among the defendants, in a case before the Court of Private Land Claims, of persons having or claiming an interest in the lands in question, this provision is not essential to the jurisdiction of that tribunal, but ancillary only. For example: if, in a suit by A against the United States for the confirmation of a grant, a confirmation should result without the presence of any third parties, the confirmation would stand, even if third parties had or claimed interests in the premises adverse to A; but the confirmation would be subject to these qualifications, namely, that third persons claiming in privity with the *same title* would become entitled, by proper suit in equity, to secure due participation in the benefits of the confirmation, and third persons claiming adversely might, notwithstanding the confirmation, set up thereafter a superior title against it. Hayner vs. Stanly, 8 Sawy. 214, 224; Carpentier vs. Montgomery, 13 Wall. 480, third syllabus. In the first cited case (8 Sawy., page 224), Judge Sawyer said:

“In U. S. vs. Morillo, 1 Wall. 707, it was assumed, though not expressly decided, that, when a grant has been once confirmed to one party and patented, the power of the board and court as to the land so patented is under the *same grant* exhausted.”

The admission of third parties defendant to a suit in the Court of Private Land Claims is to enable them, as aids to the government, to show that the

plaintiff is not entitled to all the relief demanded, but it is not for the purpose of enabling such third parties, by a short cut, and without restriction by the mode of procedure imposed on plaintiff claimants, to secure an affirmative confirmation of conflicting claims set up by themselves. The statute tolerates no such confusion of procedure. All the relief that the court can give to such conflicting claimants is to limit the effect of its decree of confirmation of the plaintiff's grant, if found regular on its face, by a provision saving such conflicting claimants from prejudice, as was done in our case, and as has been done in all statutory confirmations. Indeed, the statute itself puts this saving clause, by implication, in every decree of confirmation.

The statute is even solicitous to express that confirmations thereunder shall be *res adjudicata* only between the government and the private parties, and that no rights of private claimants to the same land shall *inter se* be prejudiced. Not an intimation can be found in the statute to support the theory that, finding a tract of land to be private property, and so adjudicating it to be as against the government, the court has jurisdiction to pursue an inquiry as to the precise rights and claims of each private owner therein, and thus exercise such jurisdiction as is invoked by courts of chancery on the subjects of partition, foreclosure of equitable liens, quieting of titles, trusts, injunctions, receiverships, etc. Surely the government has no concern with private litigations of the character above suggested.

We repeat, that a mere glance at the map of New Mexico is sufficient to show how frequently the "lapping" or conflict of confirmed grants occurs. The books are full of adjudications based on such conflicts.

1.

Perusal of the archives Nos. 882 and 1342, mentioned on page 5 of the government's brief and found (in English) at folio 68, etc., of the record, will show that the government is under a strange misapprehension in assuming that it appears from these archives or anything therein contained that the pueblos of Pojoaque and Nambé, or either of them, ever held adversely or otherwise any part of the lands affected by the present controversy, or ever had a royal grant to the same.

A. As to archive No. 882:

(a) The first document (record, folios 69-74) is an order signed by Governor Don Diego de Vargas, the general purport of which is to provide for the restoration to Spanish settlers of lands of which they had been deprived by the rebellious Pueblo Indians during the revolution of 1680, but which contains no reference whatever to the lands now in question, although it provides for a grant to certain Indian pueblos of the tract at Chimayo, a place quite remote from the Cuyamungue tract.

(b) The second document (record, folio 74) is a report of the lieutenant of Governor Don Diego de Vargas, showing the progress made by him on the

twentieth of March, 1695, in the execution of the governor's said order, but it has no reference to the lands now in controversy, or to the pueblos of Pojoaque and Nambé.

(c) The third document (record, folio 75) is a report of the same lieutenant, which relates exclusively to the Chimayo tract and the further execution of the said order.

(d) The fourth document (record, folios 76-78) relates merely to an inspection by the said lieutenant, under the said order, of lands lying far remote from the premises in controversy.

(e) The fifth document (record, folio 78) is a minute of the return of the said lieutenant to Santa Fé, and his report to the governor of what he had done as aforesaid in obedience to the said order.

(f) The sixth document (record, folio 79) is a petition of the pueblos of San Lazaro and San Cristoval, asking permission to enjoy for another year the lands from which they had been compelled to remove by the said order.

(g) The seventh document (record, folios 80-81) is the governor's decree denying the last mentioned petition, and putting this denial on the ground that the lands referred to were needed for the use of Spanish settlers.

(h) The eighth document (record, folios 82-85) is a proclamation by Governor Diego de Vargas establishing the new town of Santa Cruz, and having no relevancy whatever to the present controversy. Its only reference to the pueblos of Nambé and Pojoaque is to refer to the latter, together with other

pueblos named, as among the boundaries of the new settlement of Santa Cruz, and it does not undertake to make the slightest reference to the extent or shape of any of the said pueblos. At the foot of this proclamation appears a note of its due publication.

(i) Next following in the said archive (record, folios 85-90) are three documents having exclusive reference to the settlement of the lands in the said town of Santa Cruz.

(j) The next document (record, folio 90) is a minute of the arrival of the governor at the pueblo of San Cristoval, and his enforcement of his former order requiring the Pueblo Indians to remove to the said tract of Chimayo.

(k) The next document (record, folio 91) is a minute of the installation of a missionary in the pueblo of Nambé, but it sheds no light on the subject of the boundaries of that pueblo.

(l) All the remaining documents (record, folios 92-96) relate exclusively to the subject of the emigrants from Mexico who were to form the Santa Cruz settlement, save some reference to the establishment of missions at Nambé and Santa Cruz, and to certain Indian hostilities.

B. As to archive No. 1342, found in the record at folios 96 to 121, it sheds no light whatever on the subject of the holdings of the pueblos of Pojoaque and Nambé, or either of them, except that the recited royal decree found at folios 99-101 seems to indicate that the pasture land of a pueblo was usually limited to a "common of one league" (*Ib.*, folio 99). A

large part of this archive bears date in 1783, upwards of fifty years after the date of our grant.

It must be borne in mind that our grant was the site of the abandoned pueblo of Cuyamungue. Possession was delivered in the presence and with the assent of all neighboring Pueblo Indians (*Ib.*, folio 131). As said by Mr. Justice Murray (*Ib.*, folio 134):

“The quantity of land to which an Indian pueblo is entitled can only be determined by the grant itself. * * * The fact that the pueblo of Cuyamungue was abandoned did not extend the boundaries of the pueblos of Nambé and Pojoaque, or confer any rights on said pueblos to the land which had belonged to the pueblo of Cuyamungue. It was held by the governor and captain-general of the province of New Mexico, who had the right and power under the law to determine such questions, that the land occupied by the Indians of the pueblo of Cuyamungue, when abandoned by them, became royal public domain, and as such (he) granted it to the petitioners in 1731.”

2.

The government is in error in assuming, at page 5 of its brief, that the record discloses any adverse possession by the Pueblo Indians of any part of the Cuyamungue grant. This assumption is a mere inference from the issuance of the patents; but we showed actual rightful possession of the grant.

Against our actual rightful possession no theoretic constructive possession can be asserted. (Hunnicut vs. Peyton, 102 U. S. 333.)

3.

The two defendant pueblos were made parties by express order of the court (record, folio 124), and they certainly had their day in court. Whether or not they were served with process does not appear from the record, since all that appears on that subject is their own unsupported allegation contained in the motion of the acting Indian agent to vacate the decree (*Ib.*, folio 153), and this motion is not supported by affidavit or any evidence whatever. Every intendment is in favor of the action of the court. (Lutz vs. Linthicum, 8 Pet. 165.) At all events, the two Pueblos appeared generally, and they acquiesced, after such appearance, in the final decree of confirmation; for they have taken no appeal. It hardly lies in the mouth of counsel for the government to say that the pending appeal, taken in the name of the United States only, carries with it into this court the representation of the two pueblos by the government, and at the same time deny that the government represented those pueblos on the original trial.

4.

Hitherto it has been understood to be a rule in chancery procedure that one party to a cause cannot be heard to object, on appeal, to the fact that a third party has been omitted from the litigation, unless the object-

ing party make it appear that he was prejudiced by such omission. In the present case the government claims no interest, and it admits that we are entitled to all we claim, except so far as the pueblo surveys have intruded upon our lands. It does not assert that even one inch of the public domain is involved in this litigation. On the contrary, it expressly admits that all the land in controversy is private property, and it takes this appeal merely because it is irritated to find that the claimants of the Cuyamungue grant have the temerity to deny that the *ex parte* Indian surveys and patents are ~~in~~operative to destroy their prior rights. Surely the government states itself out of court by admitting that the United States has no interest whatever in the present controversy. It admits that our grant is complete and perfect, although it says that we ought to let the Indian pueblos have a part of it, and it further admits that the confirmations of the pueblos operated to relinquish and release all claims of the United States in the lands comprehended in the pueblo patents. The United States is foreclosed from objection: first, by the statutory confirmation in favor of the pueblos; secondly, by the judicial confirmation in favor of ourselves. How, in these circumstances, the government can have any except a Quixotic interest in the present appeal is inconceivable. By what law was the attorney-general ever made a knight errant for the vindication, at the expense of the government, of the private claims of one set of citizens against the private claims of another set?

In *United States vs. Chaves*, 159 U. S. 452, it appears from the statement of the case (*Ib.*, page 455) “that a large portion of said grant (the Cubero grant) had been disposed of by the United States to The Atlantic and Pacific Railroad Company, and that it was a necessary party defendant, and a misjoinder of parties was pleaded;” and also that “on August 29th, 1892, the court entered a decree confirming the grant, and denying the right of The Atlantic and Pacific Railroad Company to intervene except so far as their right of way was concerned, which right was admitted by the plaintiffs, from which decree an appeal was taken by the United States.” In its opinion this court held, on the point suggested (*Ib.*, page 465), that “the objection that The Atlantic and Pacific Railroad Company, as grantee from the United States of a part of the tract in question, was a necessary party defendant, has not been pressed in argument, and we only notice it to say that, under the provisions of the fifth section of this act, the private rights of third parties are not affected by any proceeding or decree under said act.”

5.

Fairness, however, compels us to admit that the government, in its brief, struggles to show that it had a pecuniary interest in this litigation, because, as it alleges, we were entitled to demand indemnity, at a rate not exceeding \$1.25 per acre, for so much of our land as may be comprehended within the pueblo patents. It appears aggrieved because this right

of indemnity, so benevolently conceded to us, was ignored by the court below, as well as ourselves, and it therefore asks that the case be remanded to the court below in order that the amount of indemnity to be paid to us, out of the national treasury, may be ascertained and declared. In our candor, we have, on page 10 of our original brief, given our opinion that indemnity is provided by the statute only in respect of lands disposed of by the government under a technical "sale" or "grant," and that it is not intended to subject the government to any expenditure as indemnity for a mere relinquishment or release of claim by prior confirmations made expressly subject to all valid adverse rights. Some of our lands within the patented lines consist of barren craggy hills infested with crotaline monsters unapproachable unless by an Elsie Venner, and for these lands we should be most willing to accept \$1.25 an acre from the government, if any such appropriation can legally be made in this case. At the same time, it is hard for us to understand how the government can insist on its interest in the present litigation, founded on this pretended indebtedness to us, when we deny that we are its creditors, and the court below, by its adjudication, has taken us at our word.

If the grant octopus, known as the Beales grant, considered by this court in *Interstate Land Co. vs. Maxwell Land Co.*, 139 U. S. 569, had been a perfect grant, free from the bar of the Statute of Limitations, and as such had been established in the Court of Private Land Claims, would the government

have contended that the prior confirmation of the Maxwell land grant would, under the statute in question, give to the Interstate Land Co. the right to be indemnified out of the treasury of the United States for the large tract, amounting to hundreds of thousands of acres, in conflict between the two grants?

We can understand that, as matter of good faith, Congress should have been solicitous to protect its own unqualified grantees by the effort to compel a conflicting grant claimant to accept an indemnity in lieu of the lands sold or granted by the government (although it is anomalous to put the maximum of that indemnity at \$1.25 an acre when the acres diverted might be fairly worth \$10.00 each), but it appears to us incredible that, after merely "relinquishing" or "releasing" all claim to specific grant lands—*i. e.*, disclaiming interest therein—on the express condition that such relinquishment, release or disclaimer should not operate to the prejudice of any adverse rights, Congress should have intended, by the statute now in question, to enlarge the effect of such disclaimers by annexing substantially a warranty of title, and by impliedly repealing the very condition (in favor of prior rights) by which the disclaimers were originally qualified. On the contrary, we are persuaded that the statute in question is *in pari materia* with all confirmatory acts relating to New Mexico, and corroborative thereof. Indeed, the statute is inspired with the same general policy, namely, the safeguarding of the rights of the public, and non-interference with the claims and controversies *inter se* of private citizens.

6.

Section 9 of the statute contains the only provision which authorizes an appeal from a decision of the Court of Private Land Claims, and that section seems to confine the right of appeal to the government and the "claimant," thus apparently treating third parties as merely incidental factors; the authorized appellants being described as "the United States, in case of the confirmation of a claim, in whole or in part, and the *claimant*, in case of the rejection of a claim, in whole or in part."

In the Santa Fé case (165 U. S., at pages 716 and 717), this court, in rendering the decision, was not embarrassed by the absence of interested third parties.

7.

None of the cases cited on the government's brief are relevant or important to the present controversy. *Landes vs. Brant*, 10 How. 348, and several of the others, dealt with imperfect grants. In *United States vs. Moore*, 12 How. 209, the grant was held to be void. In that case, however, the court took occasion to anticipate the doctrine of *United States vs. Castant*, 12 How. 437, namely, that it is error to adjudicate against the government that a grant claimant has a right to indemnity for parts of his land already disposed of by the government, without identifying such parts and impleading the new holders.

The same remark is true of *United States vs. Davenport's Heirs*, 15 How. 1, where the court sustained the confirmation, but rejected so much of the

decree as allowed indemnity for lands previously sold or disposed of by the government, remitting the confirmee on this point to the political department.

In our case, no indemnity has been prayed or decreed, and no attempt made to debar the pueblos from any right whatever under their patents.

8.

Conclusion.

The contention of the government involves necessarily the absurd corollary that, had a third party set up in the court below an adverse claim, based only on the territorial Statute of Limitations (operative upon complete and perfect grants), it would have been the duty of the Land Court (unaided by a jury) to investigate, measure, identify and adjudicate the pretended adverse title; and so as to any number of independent squatter claims.

Respectfully submitted,

JNO. H. KNAEBEL,
Counsel for Appellees.

UNITED STATES *v.* CONWAY.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 13. Argued and submitted January 12, 1899. — Decided October 30, 1899.

The act of Congress of December 22, 1853, 11 Stat. 374, confirming a grant of pueblos to Indians, operated to release to the Indians all the title of the United States to the land covered by it as effectually as if it contained in terms a grant *de novo*; and such action of Congress is not subject to judicial review.

Statement of the Case.

The United States is a proper and necessary party to a suit brought in the Court of Private Land Claims for confirmation of a private land claim, covering pueblos previously so granted to Indians, and can follow the litigation through all the courts that are given jurisdiction of the case. When a title to public land has been confirmed by Congress, it should be respected by the Court of Private Land Claims: but conflicting claimants may resort to the ordinary remedies at law.

THIS was a petition filed by Maria de la Paz Valdez de Conway and twenty-one others in the Court of Private Land Claims for the confirmation of a tract of land known as the Cuyamungue grant, or private land claim, situated in the county of Santa Fé, Territory of New Mexico, and alleged to contain in excess of five thousand acres.

It appears from an examination of the *expediente*, offered in evidence as the basis of the claim, that on January 22, 1731, Bernardino de Sena, Tomas de Sena and Luis Lopez presented a petition to Governor Juan Domingo Bustamante to grant them the surplus land in the abandoned pueblo of Cuyamungue as royal, public and uninhabited, and described it as being situated on both sides of the river Tesuque, (formerly Cuyamungue,) and extending from a bluff of the pueblo of Cuyamungue to the hills of the Nambé road.

The governor made the grant on the same day, directed the chief alcalde of the new village of Santa Cruz to notify the Indians of the pueblo of Tesuque, the heirs of certain adjoining property owners and all other citizens of the vicinity to show cause, if any they had, why the tract should not be granted to the petitioners, and, if there were no objection, to put them in possession.

Such notice having been given, the alcalde on January 22, 1731, put the petitioners in juridical possession of the lands, describing the boundaries; and, after executing such act, returned the proceedings to the governor, by whom they were approved and placed in the royal archives of the city of Santa Fé, *testimonio* thereof being delivered to the grantees, the original of which is now a part of the archives of the United States in the custody of the surveyor general of the Territory. The grantees, their heirs and assigns, have been in possession

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of the land grant up to the present time, a period of one hundred and sixty-four years.

The petition further alleged that the claim had been examined and approved by the surveyor general of the Territory, returned by him favorably to Congress with a recommendation that the same be confirmed to the legal representatives of the original petitioners; but that it had never been acted upon by Congress, or the authorities of the United States.

The Government made no answer to the petition, but the court proceeded to hear the cause upon petition and proofs under the last clause of section six of the Court of Private Land Claims act, notwithstanding the failure of the Government to file an answer. Petitioners produced certain witnesses to the effect that portions of the land granted had been occupied and cultivated by persons claiming under the original grantees; while the Government showed that Indians of the pueblos of Nambé and Pojoaque had many years before instituted proceedings before the surveyor general of New Mexico under the act of July 22, 1854, for four leagues of land each; that the surveyor general had recommended that the lands thus demanded be granted to them, and Congress had confirmed the grant to each of said pueblos for four leagues as recommended, 11 Stat. 374, c. 5, December 22, 1858; that the grants to said pueblos were surveyed and patents for them issued; that such surveys covered the larger portions of the land of the old pueblo of Cuyamungue, which petitioners alleged were granted to the original grantees in this case.

The oral testimony tended to show that the pueblo of Pojoaque had been in existence since 1710, and the pueblo of Nambé from a time immemorial.

Upon motion made by the Government and upon the consent of all the parties to the proceeding, it was ordered on October 11, 1895, that these pueblos be made parties, and that the petition of the claimants be deemed amended accordingly. It did not appear that any copy of the petition was served upon these pueblos, or that they appeared or waived service; but the court on October 24, 1885, entered a decree against the United States confirming the entire grant as com-

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plete and perfect as of the date of the treaty of Guadalupe Hidalgo, in 1848, and further decreed that the confirmation should in no nowise affect the rights of the pueblos of Pojoaque and Nambé, if any they have, as between them and the confirmees under their patents issued by the United States Government.

Subsequently to this decree, and on November 9, the Indians of the two pueblos above named entered their appearance, stated that the lands confirmed to the petitioners were almost entirely within the limits of the lands confirmed by the act of Congress to these pueblos, and patented to them, and that while they were made parties defendant to the petition they were never served with process, and had no opportunity of making a defence, and therefore moved the court to vacate the decree of confirmation and allow them to be heard in opposition to the claim. This motion was subsequently, and on December 2, 1896, denied, whereupon the United States appealed to this court.

Mr. Matthew G. Reynolds for the United States. *Mr. Solicitor General* was on his brief.

Mr. John K. Knaebel, for appellees, submitted on his brief.

MR. JUSTICE BROWN, after stating the case as above, delivered the opinion of the court.

This case involves the proper disposition by the Court of Private Land Claims, under the act of Congress constituting the court, of overlapping grants. The facts are extremely simple: Petitioners derived their title by purchase or inheritance from the original grantees, who held under a royal grant made in 1731 by the then governor of New Mexico, and through which they had been in possession of portions of the land ever since. Their grant had been examined, surveyed and approved by the surveyor general of the United States in 1871, but had never been confirmed by Congress. It was not true, as stated in the petition, however, that "no person or

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persons, natural or artificial, are in possession of the said land, or any part thereof, or claim the same or any part thereof adversely to your petitioners, or otherwise than by their lease or permission," since it appears there were two Indian pueblos within the limits of the grant, from a time whence the memory of man and the traditions of the several tribes ran not to the contrary. It was shown that one of them, Pojoaque, had a bell originally cast for its church which bore the date of 1710. These pueblos had instituted proceedings before the surveyor general under the act of July 22, 1854, 10 Stat. 308, for four leagues of land, which he recommended to be granted, and in compliance therewith Congress confirmed a grant to each of said pueblos, which grants were subsequently surveyed and patents issued. 11 Stat. 374. These surveys covered all the land of the abandoned pueblo of Cuyamungue, granted to the petitioners, except about one hundred acres. It was insisted in the court below that the land covered by these patents should be excepted out of the decree of confirmation in this case; but it was held that the pueblos had no just right or claim at the date of the treaty to any part of the land covered by the petitioners' grant; that the United States acquired no right or interest in the land of a citizen in the ceded territory held by a complete and perfect title at the date of the treaty; that Congress did not undertake to decide who was the rightful owner of the land confirmed to the pueblos, but on the contrary expressly stated that the patents were not to interfere with any prior right to the land which might be held by other parties. Said the court: "If the petitioners in this case have a complete and perfect title to the land in question under the grant of 1731, it necessarily follows that the pueblos of Nambé and Pojoaque have no right or title to any of the land within the boundaries of such complete and perfect grant. But the decree of this court does not in any way affect the right and title (if any) that the pueblos acquired by their patents from the United States, as between them and petitioners."

The court declined to except out of the decree of confirmation the lands covered by the pueblos' patents, but did adjudge that the confirmation should in nowise affect the rights of

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the pueblos as between them and the petitioners under their patents.

The case depends largely upon the construction given to the sections and parts of sections of the act of March 3, 1891, c. 539, 26 Stat. 854, constituting the Court of Private Land Claims.

By section six the petitioner is required to set forth, among other things, "the name or names of any person or persons in possession of or claiming the same," (the lands,) "or any part thereof, otherwise than by the lease or permission of the petitioner; . . . and a copy of such petition, with a citation to any adverse possessor or claimant, shall . . . be served on such possessor or claimant in the ordinary legal manner of serving such process in the proper State or Territory, and in like manner on the attorney of the United States;" whose duty it is "to enter an appearance, and plead, answer or demur, . . . and in no case shall a decree be entered otherwise than upon full legal proof and hearing."

By section seven the court has "full power to hear and determine all questions in cases before it relative to the title to the land the subject of such case; the extent, location and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, . . . and all other questions properly arising between the claimants, or other parties in the case, and the United States."

By section eight, persons claiming lands under a Spanish or Mexican title "that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for in other cases for confirmation of such title;" but the confirmation of such title "shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall *have been disposed of by the United States*, and always subject to and not to affect any conflicting private interests, rights or

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claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person, as between himself and other claimants or persons in respect of any such lands, shall be in any manner affected thereby." It was under this section that the petition in this case was presented and a "complete and perfect title" claimed.

By section thirteen, defining the character of claims that shall be allowed as those that "if not then complete and perfect at the date of the acquisition of the Territory by the United States, the claimant would have had a lawful right to make perfect had the Territory not been acquired by the United States," it is provided in the second subdivision that "no claim shall be allowed that shall interfere with, or overthrow, any just or unextinguished Indian title or right to any land or place;" and by subdivision four, that "no claim shall be allowed for any land the right to which has hitherto been lawfully acted upon or decided by Congress or under its authority."

Subdivision five provided: "No proceeding, decree or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be preserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such land."

Subdivision six provides: "No confirmation of or decree concerning any claim under this act shall in any manner operate or have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims or lands, or their disposition, otherwise than as in this act provided."

1. The decisive question in the case is: Whether the lands

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confirmed by the act of Congress of December 22, 1858, pursuant to the recommendation of the surveyor general (11 Stat. 374) to the Indian pueblos of Pojoaque and Nambé, should have been excepted from the decree of confirmation? This act also contains a proviso similar to that contained in the Court of Private Land Claims act, that "this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights should such exist."

This act operated, then, to release to the Indians all the title of the United States to the land covered by it, and passed the title of the United States as effectually as if it contained in terms a grant *de novo*. *Ryan v. Carter*, 93 U. S. 78, 82. Nor is the action of Congress confirming such private land claim subject to judicial review. As was said by this court in *Tameling v. United States Freehold & Emigration Co.*, 93 U. S. 644, 662: "No jurisdiction over such claims in New Mexico was conferred upon the courts; but the surveyor general, in the exercise of the authority with which he was invested, decides them in the first instance. The final action on each claim reserved to Congress is, of course, conclusive, and therefore not subject to review in this or any other forum. It is obviously not the duty of this court to sit in judgment upon either the recital of the matters of fact by the surveyor general, or his decision declaring the validity of the grant. They are embodied in his report, which was laid before Congress for its consideration and action." See also *Maxwell Land Grant case*, 121 U. S. 325.

The Government having thus exhausted its power with reference to the land in dispute by granting all its title as sovereign proprietor to the pueblos, it is difficult to see upon what principle it is called upon to make or confirm another grant to a different person. Nothing can be plainer from the language of the Private Land Claim act than that lands "that shall have been disposed of by the United States" should be excepted from the decree of confirmation, (sec. 8;) that no claim shall be allowed which shall interfere with or overthrow any just or unextinguished Indian title, (sec. 13;) that no

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claim shall be allowed for any land, the right to which has been lawfully acted upon and decided by Congress, (sec. 13,) and that no proceeding under the act shall conclude or affect the private rights of persons as between each other, (sec. 13). Under these provisions, if the court were to confirm this grant for lands already granted, such confirmation would be void, as nothing is better settled by this court than that a patent issued by the United States to lands which they do not own is a simple nullity. *Polk's Lessee v. Wendell*, 9 Cranch, 87, 99; *S. C.*, 5 Wheat. 293; *Sabariego v. Maverick*, 124 U. S. 261, 281; *Wright v. Roseberry*, 121 U. S. 488, 520; *Doolan v. Carr*, 125 U. S. 618, 625; *Noble v. Union River Logging Railroad*, 147 U. S. 165, 174.

It is true that the act of December 22, 1858, confirming these lands to the pueblos may have been itself void by reason of petitioner's prior title thereto; but that is a question which is not necessarily involved in this case and upon which we express no opinion. It will occasionally happen that the Government through accident or inadvertence will patent the same land a second time; but when its attention is called to the fact that the land has been previously patented it cannot patent the same land a second time without virtually stultifying itself. A patent assumes that a patentor has certain rights to convey, and that if those rights have already been conveyed with the knowledge of the grantor, a second patent carries with it a suspicion of a want of good faith.

Nor is the confirmation of this patent essential to the protection of the petitioners. The title set forth is one which was complete and perfect at the date of the treaty, and while they had the right, under section eight, they were clearly not bound to apply to the court for a confirmation of such title, but were at liberty to resort to the local courts for its establishment.

It is possible that the surveyor general, in recommending the grant of four square leagues to each pueblo, measured from the church as a centre, allowed more than was proper; yet, as he acted according to the opinion at one time prevailing, and as Congress confirmed the grant to that amount, the propriety of such grant cannot be attacked here upon that or

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any other ground. As was said in the case of *Tameling v. U. S. Freehold Co.*, 93 U. S. 644, 663: "Congress acted upon the claim as recommended for confirmation by the surveyor general. The confirmation being absolute and unconditional, without any limitation as to quantity, we must regard it as effectual and operative for the entire tract."

Nor is this the proper time to adjudicate upon the respective merits of the two titles. We have only to consider whether the Government can properly be called upon to confirm that which it has already confirmed to another party. The Court of Private Land Claims seems to have assumed that the grant by Congress to the pueblos was absolutely void by reason of the fact that the petitioners having a complete and perfect title the United States had nothing to convey. This may be entirely true, but it is not perceived how the petitioners' title can be aided by the Government divesting itself for a second time of a title which it had already released. The duty of the court under section eight, "to hear, try and determine the validity of the same" (the grant) "and the right of the claimant thereto, its extent, location and boundaries," is discharged by determining the extent and validity of the grant as between the United States and the grantee, and it is not incumbent upon the Court of Private Land Claims to determine the priority of right as between him and another grantee. Such private rights are carefully preserved in the eighth and thirteenth sections.

2. The appeal in this case was properly taken by the United States. While the Government may have no interest in the result of the litigation, it is a proper and necessary party to the suit, and it would be a strange conclusion to hold that it could not follow the litigation through all the courts that are given jurisdiction of the case. Upon such appeal the Government is at liberty to show that the petitioner is not entitled to a confirmation of his claim. Indeed, an appeal is expressly given by section nine, which enacts that "the party against whom the court shall in any case decide — the United States in case of the confirmation of the claim in whole or in part, and the claimant in case of a rejection of a claim in whole

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or in part—shall have the right of appeal to the Supreme Court of the United States.”

3. That the Indian claim or title is a “just and unextinguished” one within the meaning of section thirteen, subdivision two, of the act is shown by the fact that such title was confirmed by Congress. By the word “just” in this connection is meant only a title which is good upon its face, or not manifestly frivolous—not one which shall ultimately turn out to be valid. As already observed, it was not the object of the act to permit private titles to be litigated in the Court of Private Land Claims, (although perhaps this may be done incidentally,) but merely to determine if and to whom the United States ought to release its rights as sovereign proprietor of the soil. As was said by this court in *Adam v. Norris*, 103 U. S. 594:

“But the United States, in dealing with the parties claiming under Mexican grants lands within the Territory ceded by the treaty of Mexico, never made pretence that it was the owner of them. When, therefore, guided by the action of the tribunals established to pass upon the validity of these alleged grants, the Government issued a patent, it was in the nature of a quitclaim—an admission that the rightful ownership had never been in the United States, but had passed at the time of the cession to the claimant, or to those under whom he claimed. This principle has been more than once clearly announced in this court. The leading cases are *Beard v. Federy*, 3 Wall. 478; *Henshaw v. Bissell*, 18 Wall. 268; *Miller v. Dale*, 92 U. S. 478.

“Such a patent was, therefore, conclusive only as between the United States and the grantee, [and was evidence that, as to them, the claimants had established the validity of the grant.] . . . We do not think, therefore, that if defendant’s survey and patent are based upon a superior Mexican grant, their rights are concluded by the prior survey of the plaintiffs.”

We do not wish to be understood as holding that two claimants to the same land may not litigate, as between themselves, which of the two is entitled to a confirmation, and

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the question thus becomes *res adjudicata*; but when the title has once been confirmed by Congress it should be respected by the Court of Private Land Claims as if it were a confirmation by the court itself, and conflicting claimants are at liberty to resort to the ordinary remedies at law or in equity, according to the nature of the claim.

The main object of the Court of Private Land Claims is to ascertain and determine whether the land claimed as private property under the treaty is in fact private property, or, on the contrary, is public property. In the latter case, of course, a confirmation is refused; in the former case a confirmation is made if the claimant appears to have, as between himself and the United States, the right to it, but subject to the rights of others who are at liberty to assert their superior title in the local courts.

We are therefore of opinion that the decree of confirmation should have excepted the pueblo lands, and such decree is accordingly reversed, and the case remanded for further proceedings in accordance with this opinion.

MR. JUSTICE SHIRAS and MR. JUSTICE WHITE dissented.
